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In the

Appellate Court of Maryland

No. ACM-REG-1325-2024

September Term, 2024

JUSTIN KYLE HOLDER

Appellant,

v.

WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL.,

Appellees.

Appeal from the Circuit Court for Washington County, Maryland
(Hon. Judge Richard E. Jordan)

RECORD EXTRACT – VOLUME 1

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Record Extract
ACM-REG-1325-2024
Sept. Term 2024; No. 1325

Table of Contents

VOLUME 1 - Day 1 Trial Transcript

A. TESTIMONY OF JOSHUA O'NEAL

1. Direct examination – Mr. Weddle. (E0031)
2. Cross examination – Mr. Karpinski. (E0072)
3. Redirect examination – Mr. Weddle. (E0078)

B. TESTIMONY OF BARRY LEVEY

1. Direct examination – Mr. Weddle. (E0083)
2. Cross examination – Mr. Karpinski. (E0113)
3. Redirect examination – Mr. Weddle. (E0116)

C. TESTIMONY OF HONORABLE JOSEPH MICHAEL

1. Direct examination – Mr. Karpinski. (E0119)
2. Cross examination – Mr. Weddle. (E0145)

D. TESTIMONY OF ADAM GREIVELL

1. Direct examination – Mr. Weddle. (E0176)
2. Cross examination – Mr. Karpinski. (E0217)
3. Redirect examination – Mr. Weddle. (E0226)

VOLUME 2 - Day 2 Trial Transcript

A. TESTIMONY OF HONORABLE JOSEPH MICHAEL CONTINUED

1. Cross examination – Mr. Weddle. (E0256)
2. Redirect examination – Mr. Karpinski. (E0296)
3. Recross examination – Mr. Weddle. (E0298)

B. TESTIMONY OF ANDREW BRIGHT

1. Direct examination – Mr. Weddle. (E0307)
2. Cross examination – Mr. Karpinski. (E0378)
3. Redirect examination – Mr. Weddle. (E0405)
4. Recross examination – Mr. Karpinski. (E0417)
5. Redirect examination – Mr. Weddle. (E0422)

C. TESTIMONY OF JUSTIN HOLDER

1. Direct examination – Mr. Weddle. (E0426)

VOLUME 3 - Day 3 Trial Transcript

A. TESTIMONY OF JOSHUA O'NEAL

1. Direct examination – Mr. Weddle. (E0471)
2. Cross examination – Mr. Karpinski. (E0473)

B. TESTIMONY OF JUSTIN HOLDER CONTINUED

1. Direct examination – Mr. Weddle. (E0477)
2. Cross examination – Mr. Karpinski. (E0550)
3. Redirect examination - Mr. Weddle. (E0614)
4. Recross examination - Mr. Karpinski. (E0634)

VOLUME 4 - Day 4 Trial Transcript

A. TESTIMONY OF ANDREW BRIGHT

1. Direct examination – Mr. Karpinski. (E0661)

VOLUME 5 - TRIAL EXHIBITS

A. **Volume 5A**

1. Petitioner Trial Exhibits 1-6. (E0763)

B. **Volume 5B**

1. Petitioner Trial Exhibits 7-25. (E0778)

C. **Volume 5C**

1. Petitioner Trial Exhibits 26-45. (E0893)

D. **Volume 5D**

1. Petitioner Trial Exhibits 46-50. (E0988)

E. **Volume 5E**

1. Petitioner Trial Exhibit 51. (E1082)
2. Respondent Trial Exhibits 1-12. (E1083)

VOLUME 6 - PLEADINGS, AFFIDAVITS, AND ORDERS

A. Complaint. (E1179)

B. Answer. (E1190)

C. Amended Complaint. (E1197)

D. Amended Answer. (E1223)

E. Interlocutory Order(s) of the Trial Court

1. Respondents' Protective Order Granted (E1239)
2. Petitioner's Strike Affidavit Granted (E1240)
3. Respondents' Mot to Dismiss Denied (E1241)
4. Respondents' Mot to Extend Granted (E1242)
5. Respondents' Mot to Alter Denied (E1243)
6. Respondents' Mot to Dismiss Denied (E1245)
7. Petitioner's Mot to Compel Denied (E1246)
8. Respondents' Mot to Quash Depo Granted (E1247)

F. Final Order and Oral Opinion. (E1248)

G. Petitioner's Mot to Amend denied. (E1261)

H. Affidavit of Andrew Bright. (E1262)

I. Affidavits of Justin Holder. (E1266)

J. Notice of Appeal Filed. (E1273)

K. Docket Entries. (E1275)

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN HOLDER	*	
PETITIONER	*	
VS.	*	CASE NO.: C-21-CV-21-97
BOARD OF COUNTY	*	
COMMISSIONERS,	*	
WASHINGTON COUNTY, et al.	*	
RESPONDENTS	*	

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OFFICIAL TRANSCRIPT OF PROCEEDINGS

Hagerstown, Maryland

October 18, 2023

9:06 A.M.

BEFORE:

The Honorable Richard Jordan, Senior Judge

Appearances:

For the Petitioner: Jacob Weddle, Esquire

For the Respondents: Kevin Karpinski, Esquire

Transcribed from electronic recording by:

Tracy L. Zamora, Court Reporter

Circuit Court for Washington County, MD

24 Summit Avenue, Suite 302

Hagerstown, Maryland 21740

240-313-2548

TABLE OF CONTENTS

	PAGES
Preliminaries	6 - 8
Motion to Exclude Witnesses	8 - 10
Opening Statement:	
Mr. Weddle	10 - 19
Mr. Karpinski	19 - 30
Testimony:	
Joshua O'Neal	
Direct Examination – Mr. Weddle	31 - 72
Cross-Examination – Mr. Karpinski	72 - 78
Redirect Examination – Mr. Weddle	78 - 82
Barry Levey	
Direct Examination – Mr. Weddle	83 - 112
Cross-Examination – Mr. Karpinski	113 - 116
Redirect Examination – Mr. Weddle	116 - 118
Joseph Michael	
Direct Examination – Mr. Karpinski	119 - 144
Cross-Examination – Mr. Weddle	145 - 166
Discussion Re: Witnesses/Exhibits	166 - 169
Discussion Re: Mr. Greivell's Testimony	170 - 176
Testimony:	
Adam Greivell	
Direct Examination – Mr. Weddle	176 - 217
Cross-Examination – Mr. Karpinski	217 - 226

TABLE OF CONTENTS

	PAGES
Testimony:	
Adam Greivell	
Redirect Examination – Mr. Weddle	226 - 232
Discussion Re: Scheduling	233 – 240
Certification Page	241

****

EXHIBIT LIST

	MARK	ADMIT
Petitioner's Exhibit 1 Email Chain	35	42
Petitioner's Exhibit 2 Letter, 6/23/2020	42	54
Petitioner's Exhibit 3 Email, 12/23/2020	54	66
Petitioner's Exhibit 4 Letter, 9-27-2021	65	65
Petitioner's Exhibit 5 Keedysville Town Records	105	118
Petitioner's Exhibit 6 NRS Citations	147	157
Petitioner's Exhibit 7 Emails	157	--

EXHIBIT LIST

	MARK	ADMIT
Petitioner's Exhibit 8 Email, 10/1/2020	169	169
Petitioner's Exhibit 9 Email, 11/12/2020	169	169
Petitioner's Exhibit 10 Discovery Letter	179	180
Petitioner's Exhibit 11 Discovery Response	193	196
Petitioner's Exhibit 12 Email, 9/17/2020	196	197
Petitioner's Exhibit 13 Email, 9/25/2020	197	199
Petitioner's Exhibit 14 Email, 9/28/2020	199	--
Petitioner's Exhibit 15 Email, 9/28/2020	201	--
Petitioner's Exhibit 16 Email, 9/30/2020	203	206
Petitioner's Exhibit 17 Email Response, 9/30/2020	206	207
Petitioner's Exhibit 18 Email, 10/1/2020	207	209

EXHIBIT LIST

	MARK	ADMIT
Petitioner's Exhibit 19 Email, 10/9/2020	209	210
Petitioner's Exhibit 20 Email Response, 10/9/2020	210	211
Petitioner's Exhibit 21 Email & Correspondence, 10/19/2020	211	214
Petitioner's Exhibit 22 Email Response, 10/19/2020	214	214
Petitioner's Exhibit 23 Email, 10/19/2020	214	--
********		
Respondent's Exhibit 1 Correspondence, 10/14/2020	126	144
Respondent's Exhibit 2 Email Chain	131	144
Respondent's Exhibit 3 Email Exchange (Karpinski & Michael)	132	144
Respondent's Exhibit 4 Email to Mr. Downey	141	144
Respondent's Exhibit 5 Email, 8/12/2021	143	144

P R O C E E D I N G S

THE COURT: Good morning, please have a seat.

MR. KARPINSKI: Good morning, your Honor.

MR. WEDDLE: Good morning.

THE COURT: Good morning everybody. I will call the case, and, uh, that will be in the Matter of Justin Holder, C-21-CV-21-0097. If counsel could identify?

MR. WEDDLE: Good morning, your Honor. My name is Jacob Weddle. I'm here on behalf of the plaintiff in this matter, Justin Holder. And to my right is the Plaintiff, Mr. Holder.

THE COURT: Mr. Holder, good morning.

MR. HOLDER: Good morning, your Honor.

MR. KARPINSKI: Good morning, your Honor. Kevin Karpinski on behalf on Kirk Downey, who is to my left, Andrew Bright, who is also to my left, and on behalf of the Board of County Commissioners, all three defendants.

THE COURT: Okay. First of all, I apologize for the mix up on scheduling, particularly to counsel or anybody else, witnesses who were here yesterday. When we adjusted our length of trial, I'm sure you heard, I thought we were moving a Tuesday, Wednesday, Thursday trial to Wednesday, Thursday, and apparently it was on the docket for Monday to start. And that had been on my calendar for months. So I'll take responsible for that

for not at least doublechecking with the clerk. So my apologies folks for - -

MR. KARPINSKI: That's quite all right, your Honor.

THE COURT: - - a non-start yesterday. Let's see what we can do in terms of moving along. I'm not going to rush anybody, um, but we'll see how it goes.

Let me also say, I did, as you will recall, grant the motion to strike the jury demand. I've been in trial for the last couple weeks on a med mal case and never quite got around to what I intended to do to write the opinion in that case. I will say, for the record, however, I was persuaded as you - - you would perceive, for better, for worse, by the plaintiff's argument, uh, against the jury trial requested by the defendant, correct?

MR. KARPINKSI: It was the other way around, the plaintiff.

THE COURT: The other way. Um, at any rate, I was persuaded by the opposition to the jury trial and therefore granted the motion and I said to you at the time that I did grant that motion so that you all would at least know where you stood back at that hearing, but I did not, uh, articulate or write an opinion with respect to the rationale. So I would just adopt the, uh, position taken against the jury trial as the rationale of the Court for granting the motion to strike.

Okay, any preliminary matters from counsel?

MR. KARPINSKI: No your Honor.

MR. WEDDLE: No your Honor.

THE COURT: All right.

MR. KARPINSKI: I guess, actually one. Uh, in terms of schedule, I don't know if anyone told your Honor, Judge Michael is going to be a witness in the case. We scheduled him for 9:30 on Monday.

THE COURT: Okay.

MR. KARPINSKI: And we were actually all just happened to walk in the courtroom at the same time, depending on how quickly we get moving today, he said that he may be able to testify later this afternoon.

THE COURT: Okay. We'll see how it goes. Um, as I said to Judge Wilson yesterday, I was pretty flexible, so Monday is good if you all, in the meantime, between now and the end of the day, if something else is different, almost anything is available at my end over the next couple weeks.

All right, so if we could have some opening statements?

MR. WEDDLE: Yes, your Honor, before I give my opening statement, because I'm going to go into some facts, I think as the record will show, I'd like to invoke the rule on witnesses. There are two witnesses

for, um, that - - adverse witnesses that I'm going to call.

THE COURT: Sure. Anybody who is in the courtroom who may be a witness in this case, um, I'm afraid you're going to have to wait outside during the course of the trial until expressly advised that you may remain in the courtroom, which may be after you testify or may not be. As part of the rule on witnesses, uh, you may not discuss this case with anybody at all during the trial unless permitted by the Court. Uh, and you may not entertain somebody telling you what is going on in the courtroom. Obviously, the idea is to keep everybody kind of independent within their own selves, what information they have, without being, uh, impacted by other folks. So if counsel is able to schedule or accommodate witnesses in some way, uh, you are certainly free to do that. And if there is any issue on that, just let me know. So anybody who will be a witness, or may be a witness, if you could please step outside. Does counsel need to talk to any of the witnesses in terms of scheduling at all?

MR. WEDDLE: No your Honor. We have, uh, there are - - Just for the record, there are two witnesses here that, um, will be stepping outside – one is Mr. Joshua O'Neal, behind me, excuse me, Josh O'Neal, and Mr. Barry Levey

behind him. The rest of the witness, um, the parties are here obviously they are going to say. But Mr. O'Neal and Mr. Levey, we would ask, be sequestered.

TH COURT: Okay. Okay. Anything else, then, before openings?

MR. KARPINSKI: No your Honor.

THE COURT: Okay. Then we'll get started with opening statement. I will, for the record, note that the two witnesses identified as being in the courtroom and perhaps testifying, have now stepped out of the courtroom and have been advised of the rule on witnesses.

MR. WEDDLE: Thank you, your Honor.

OPENING STATEMENT

MR. WEDDLE: We're here today on a four count, uh, complaint under the Maryland Public Information Act. All persons are entitled to have access to information about affairs of the government, and official acts of public officials and employees. The MPIA creates a general presumption in favor of disclosure of government or public documents.

The provisions of the Public Information Act reflect the legislative intent that citizens of Maryland be accorded with wide ranging access to public information concerning the operation of their government. Consequently, unless unwarranted invasion of privacy of a

person in interest would result, the acts should be construed in favor of allowing inspections of a public record with the least cost and delay to the person that requests the inspection.

The Court of Appeals has explained that the act must be liberally construed to ensure that the act's broad and remedial purpose is met. It is a part of every agency's mission be transparent as the state sunshine laws, including the Public Information Act, allow and the public records request is not an occasion to play a game of hide and seek.

The burden is on the entity - - The burden is on the entity or the official withholding the records to sustain its action. Exemptions or exceptions are construed narrowly and in favor of disclosure.

Of import to this case there is a special rule for what's called "a person in interest." And that person in interest has a - - a higher, greater right to access an investigatory file or any documents against them.

The custodian of those records bears the burden of demonstrating with particularity, and not in purely conclusory terms, precisely why the disclosure of an investigatory record would be contrary to the public interest and they have to explore the feasibility of severing and/or redacting those documents into

disclosable and non-disclosable parts.

When you have a person in interest, a custodian must point out precisely which of the seven grounds enumerated under the - - the portion of the act that we're talking about here, which is General Provisions 4-351(b) and they have to explain precisely why they would withhold those records.

The fact that some portion of the record may be exempt from disclosure does not mean the entire record is exempt from disclosure.

Um, indeed the custodian who denies a request for inspection must, among other requirements, allow for an inspection of any part of the record that is subject to that inspection. If a record contains exempt and non-exempt materials, the custodian must permit inspection of the non-exempt and typically redact the exempt. And they have to provide a written explanation. If they don't - - If they can't redact or they don't redact, they have to provide a written explanation of why redacting that information would not address the reasons for the denial.

In this case, the Court is going to be asked to decide a number of issues, uh, namely, did the county meet its burden in denying, uh, Mr. Holder's request for several documents, uh, several categories of documents, despite the fact that the act favors disclosure and

exceptions are to be construed narrowly. The Court is going to see, um, that no exemption was enumerated and will have to determine that.

The Court will be asked to determine whether there was a law enforcement proceeding. If so, was it valid? If so, was it proper? And if so, um, how did these documents purportedly interfere with that proceeding? To what extent? Uh, and the Court is going to be asked to determine about - - questions about severability and redaction.

I'm just going to briefly comment on the four counts of the case.

In count one, um, as you'll come to learn, Mr. Holder requested a set of emails, all correspondence from the following email address morral7@msn.com, and any sheriff, deputy, county official from May 19th to the present. And that was submitted on August 3rd, 2020, by Mr. Holder. That request was denied the very next day. Approximately two months later, uh, on October 14, 2020, Mr. Holder made another request, the same request. That request too was denied the very same day for the reasons previously given. On January 21, 2021, he made another, third request for the same documents. Um, and he noted to the - - to the custodian that those documents and that request would produce exculpatory materials relating to

criminal charges pending against him which we'll get into. It was the same request for - - The January 21, 2021, request for all email communications between morral7@msn.com, and any sheriff, deputy or county official, from May 19th to the present.

In count one, none of the defendants' denials, uh, of Mr. Holder's prior requests claimed, as they must, that the disclosure to Holder as a person in interest of the documents would interfere with an ongoing investigation. There was no enumeration of law or the legal basis for the denial, much less any particularity. The word "interfere" does not appear in any of the defendants' denials of Mr. Holder's requests. The defendants have never taken the position that the disclosure of the emails would in fact interfere with an valid and proper law enforcement proceeding. The denials did not ID the valid and proper law enforcement proceedings. And the documents that he ultimately got during the course of this litigation, okay, some, uh, over a - - over a year after he made the original request, on their face, disclosed that there was not a valid and enforcement proceeding, a valid and law enforcement proceeding. There just was none. The documents show that. Those documents will be introduced into evidence.

The documents also disclosed after this case, after

we had to file suit, shows - - shows that there was - - that the state's attorney, the former state's attorney, Judge Michael, was giving legal advice, civil legal advice to Miss Morral, who was out to tarnish Mr. Holder. The documents will - - that he disclosed on their face, that the state's attorney had no basis or desire to prosecute Mr. Holder in any valid and proper law enforcement proceedings. And the documents show that the SAO had no basis or denial to prosecute. There simply was none and they made no effort to redact and they made no effort to settle. That's count one.

Count two pertains to defendants' unlawful failure to produce a June 24, 2020 email sent from Miss Morral to the Town of Keedysville and to the Washington County Sheriff, Douglas Mullendore, and Washington County, uh, Colonel Randy Wilkinson. We call this the "Morral Town of Keedysville email." And the facts will show that the Morral/Town of Keedysville email should have been produced by defendants long ago. It's our contention, and I think the record will show, that that email was co-mingled with other documents that were withheld from production. It was - - And that Town of Keedysville email was inappropriate labeled as a document relating to an open investigation or criminal proceeding and withheld from that production. In fact, however, the Morral/Town

of Keedysville email was not sent to the State's Attorney's Office. It was not part of an investigatory file. And it was not referenced in what we came to know were 16 email, uh, files that the county located in response to one of Mr. Holder's requests, and, uh, and took the position that the 16 email files were, uh, emails between the Morral's and the state's attorney and thus were privileged, uh, from production. The Morral/Town of Keedysville email was simply not in those 16 emails because it was never sent to the then State's Attorney Michael. It couldn't have been part of an investigatory file. It should have been produced when asked for. That's count two.

Count three relates to defendants' unlawful withholding of a June 20th email originating from Christine Morral, morral7@msn.com, and sent to the Washington County Public Safety System Manager, Barry Levey, and other council members of the Town of Keedysville. We call this the "Levey email." Defendants have never produced this email to me - - Mr. Holder and now claim that it's unretrievable, may have been deleted, or is otherwise unavailable because outside the bounds of the docum - - the county's document retention policy, all despite the fact that Mr. Holder had requested the same more than two years ago. It's - - This argument is not

only contrary to common sense and prudent practice, but it's wholly unsupported.

The defendants, I think, are going to have this Court believe that they can't recover a past email, um, and this sort of characterizes their information technology systems as akin to a dump rather than a warehouse. The facts will show that Mr. Holder in June - - on June 15, 2020, literally two weeks after the date of that Levey email, requested that the defendants provide him with all emails between the email address blevey@washco-md.net for the past three years. Eight days later, Mr. Bright responded that the Director of Information Systems has determined that as written a search of the emails sent to Mr. Levey during that requested period of time, which was three years, resulted in 45,239 emails.

On Wednesday, uh, December 23rd, Mr. Holder sent the county a preservation letter, asking them to reserve all the results of the 2020 MPIA request that the sent. However, as - - he then requested the Levey emails again in September of '21, September of 2021, and despite requesting in June of 2020, and - - and sending a preservation letter in December of 2020, the county took the position in September of 2021, "Sir, we can't – - we can't locate that email. It's outside our retention systems. We can't get it." That's count three.

And count four relates to the defendants' unlawful holding of at least four email communications during August 2020 and October 2020, which are known to exist between Defendant Bright, Mr., uh, Defendant Andrew Bright, and the then Deputy State's Attorney Joseph Michael. As to this count, there is no dispute that in the spring of 2022, Mr. Holder made a valid MPIA request for these four Bright/Michael emails.

On June 30th, 2022, Mr. Holder made another request for the same emails because he hadn't received them in response to the first. Defendants admittedly failed to answer or produce those responsive documents within 30 days. Those four emails were admittedly not privileged. They were referenced in the answers to interrogatories, they were not produced in response to request for the production of documents in this case, they were not produced at all in this case. Mr. Holder made - - So Mr. Holder made PIA requests. Those PIA requests were not answered.

So Mr. Holder filed suit under his right to exercise his right under the Act. And the defendants produced these documents, these four emails, only after Mr. Holder filed his amended complaint. And these docs are - - These documents are critical. This is not - - This is not a technical violation. These documents are critical

because they show - - They show the history of the requests by Defendant Bright to get the documents in response to Mr. Holder's PIA request and they show Defendant Bright's communication with then State's Attorney Joe Michael, who said that the document pertain to an ongoing investigation and that was the basis for the Defendants' denial. What we've come to learn, we've come to learn after getting these documents, that - - that none of - - that the - - that the - - the core documents that are the subject of count one, are not part of an ongoing investigation and they should have been produced in the first instance. We've learned that the state - - that the county apparently comingled documents that's the subject of count two. So these count four emails are critical and is not a technical violation.

Uh, with that said, your Honor, I'm going to, uh, allow, um, I'm going to sit down and allow Mr. Karpinski to give his opening and then I'll call my first witness.

THE COURT: Okay, thank you. Mr. Karpinski.

MR. KARPINSKI: Thank - - Thank you, your Honor. May it please the Court. Um, the evidence in this case is going to show that Mr. Holder is, what I would commonly refer to as a serial MPIA requester. Uh, he has filed approximately 150 requests with Washington County, uh, for a variety of MPIA issues from water and sewer

coverage to disputes with his, uh, neighbors, uh, to other issues, and that he's also similarly engaged in a campaign of at least a hundred MPIA request with the Town of Keedysville.

What brings us here today is, um, a few of his MPIA requests. Um, and one of the questions, I think, your Honor is going to have to really focus on, uh, and look at originally is, were these requests even properly directed to Washington County? And I say that because what the evidence is going to show is that really count one, for example, asked for documents between, uh, then Deputy State's Attorney Joe Michael, now Judge Michael, and Ms. Morral. Uh, the law is pretty clear, your Honor, that, uh, obviously the state's attorney is a state elected official. The deputy state's attorney and everyone in the State's Attorney's Office is a state employee or official under the Maryland Tort Claims Act.

So what happened here, your Honor, is, um, on August 3 of 2020, uh, Mr. Holder sends a - - an email request to, uh, to Mr. Bright and to Mr. Downey and it says, "To Whom it May Concern, Please provide all email correspondence from the following email address, (quote) 'morral7@msn.com., any sheriff deputy, county official, from May 19th to the present.'" And what Mr. Dow - - Downey did, in response, was he asked for a search of the

county's server to be done. Now like many smaller jurisdictions, uh, there are state agencies that are on the county's IT server and the sheriff's office and the State's Attorney's Office are two of those. You'll hear from Mr. O'Neal that a search was done and 16 responsive emails were found. Now Mr. Bright went ahead - - These emails are between Mr. Michael and Mr. Morral. Mr. Bright didn't know anything about what's going on; doesn't know what the State's Attorney's Office is doing; doesn't know what investigation the State's Attorney's Office has underway; doesn't know what criminal investigations the state's attorney has as it - - what relates to Mr., uh, Holder, Ms. Morral, or any of the other individuals that are involved in this. So Mr. Downey res - - writes to Mr. Michael and asks specifically, "As you will see from the thread below, we receive a PI request from a Justin Holder seeking emails from an email belonging to Christine or Scott Morral, quote, and any sheriff deputy, county official. The search by IT yielded only these emails between the Morral's and you." And goes on to say, "Question. Are these email records of an ongoing investigation protected by Government Provision Article 4-351? If not, I think they should - - I should send them to him." Now Mr. Bright, at this point, is just being a facilitator

between really, quite frankly, a request that should have been directed to the State's Attorney's Office as opposed to the County Attorney's Office, but Mr. Bright is trying to go ahead and facilitate, trying to go ahead and get a resolution for Mr. Holder. Well no good deed - - No good deed goes unpunished because the very next day, Mr. Bright goes ahead and writes to Mr. Holder and acknowledges receipt of the request. And his response was, "Your request if denied. Pursuant to Provision - - General Provision Article 4-351, a custodian may deny inspection by a person of interest of records of investigations conducted by the state's attorney. The State's Attorney's Office has advised that the records you requested are in fact records of an ongoing investigation that involve current criminal investigation." And that response, your Honor, was in - - in response to Mr. Michael, uh, getting on August 4, at 3:07, and you'll have the email, saying that the - - the documents that were requested were part of a, quote, "ongoing investigation and pending charges." So what Mr. Bright does is he simply conveys what the state's attorney's position is, which is they're part of an ongoing investigation. Now you may hear testimony, well Mr. Bright did you go ahead and determine whether they were severable or redactable? Mr. Bright doesn't know

anything about this. But the law is clear that if another agency would have denied the request, then it's incumbent upon Mr. Bright to go ahead and deny the request, and that's exactly what he did. Now what you're not going to hear is that Mr. Holder followed up with the State's Attorney's Office and said, "Hey, Mr. Michael, what's the issue here? Why can't I get these records? Why can't I have any of this?" Mr. - - Mr. Bright is simply trying to go ahead and facilitate a resolution to this matter.

So then we fast forward to, uh, October of 2020, Mr. Holder renews his request for the exact same records and says, "The charges against Ms. Morral" - - which involved I believe like wiretapping, recording a conversation between Mr. Holder and Ms. Morral. Or it may have been some other criminal charge against Ms. Morral. He writes - - He says to - - to Mr. Bright, uh, "The charges against Ms. Morral have been dropped so now can I go ahead and have the records that would have been responsive to my August 4 MPIA request?" Mr. Bright, again, attempting to facilitate a resolution between this, between the State's Attorney's Office and Mr. Holder, goes back and says to Mr. Michael, "Mr. Holder has renewed his request for email correspondence between Christine Morral, and the sheriff, deputy and county

official. I don't know the status of any investigation or cases. Thoughts?" Mr. Michael writes back, "Mr. Holder is under criminal investigation and pending prosecution for activities to those communications." Those communications being the 16 emails that are the subject of this. So in response to that, Mr. Bright writes, again, on October 15, and responds in part, "The State's Attorney's Office has advised that the records you have requested are in fact records of a still ongoing investigation that involved criminal current prosecution, therefore I must deny your request." And that's based upon the information that's provided by Judge Michael about what the State's Attorney's Office is doing. It's certainly not a willful withholding by the County Attorney's Office. The County Attorney's Office doesn't care about any of this.

So we fast forward to January and we get to January and there's this discussion of Mr. Holder saying that he's going - - the information in those emails are part exculpatory information that he's entitled to under *Brady*, which as your Honor is well aware, is a concept that is, uh, frequently used and is required in criminal proceedings involving the State's Attorney's Office. But obviously the County Attorney's Office is civil. It doesn't handle the things - - anything for the State's

Attorney's Office. So in January, there is a back and forth, and at that point, Mr. Michael goes ahead and says, "Gentlemen, as far as the criminal/natural resource charges pending against Mr. Holder from which his panoply of constitutional rights flow, he is represented by Mr. Harbin, hopefully this will ease the need for communication further with Mr. Holder, in proper person, for the, uh, for the time being." So now Mr. Bright is being told that Mr. Harbin now is - - he is representing Mr. Holder and whatever you're going to deal in terms of exculpatory evidence, *Brady* material, whatever needs to be done, Mr. Harbin and the State's Attorney's Office is going to go ahead and resolve that. And what the evidence is going to continue to show, your Honor, is that Mr. Michael was saying to the County Attorney's Office consistently through this entire process is, these emails are part of an ongoing investigation. They should not be disclosed.

Now, as I said before, from the county's perspective, the county does not care, does not care at all what it is, but the county does care about interfering with what the State's Attorney's Office is doing in discharging its obligations under the law. So this continues. Mr. Michael continues to advise that Mr. Holder has appealed the charges, is - - and they're going to be - - he has

noted an appeal, and that he's going to go ahead and be recharged.

And then finally in August of 2021, Mr. Michael goes ahead and refers the lawyer for, um, Christine Morral and Justin Holder versus Christine Morral, because what you'll also hear, your Honor, is not only in addition to being a serial MPIA request, Mr. Holder is a serial litigator. He's filed nine cases in the last two years and they've involved cases involving Washington County, MPIA requests to the Department of Natural Resources, ongoing disputes with his neighbors. All of this is going on, uh, over the last two years. It's a scorched earth mindset to just go ahead and try and wear everyone down in this entire process regarding, um, what Mr. Holder wants.

So then in August of 2021, Mr. Michael, who is about to go ahead and take the bench, refers Peter Rogers, who is the attorney for Christine Morral, and says, Mr. Michael says on August 12 of 2020 (sic), "Please contact County Attorney Kirk Downey and/or outside counsel, I think his name is Kevin Karpinski." At that juncture, it appears that the State's Attorney's Office no longer has any real vested interest and/or there are no pending investigations involving Mr. Holder. So what did Mr. Downey do? Mr. Downey produced the records. And there

may have been an issue where one document was comingled with the others, but that would have been inadvertent and all those records were produced.

So that's count - - really sort of count one and count two.

Count three, I'll call the Barry Levey email and what you're going to hear about the Levey email is, is that Mr. Levey is also an employee of the sheriff's office. He's not - - He's not a county employee. He is an employee of the sheriff, who is obviously, again, another constitutional officer, uh, and that's who Mr. Levey answers to. But also interestingly enough, Mr. Levey is Mr. Holder's father-in-law. And there is a heated dispute between Mr. Levey and Mr. Holder about ongoing matters involving, uh, when Mr. Levey was an elected official for the Town of Keedysville. And so what happens here is, your Honor, uh, Mr. Levey resigns from his elected official position in Keedysville, and there is an email that apparently was sent from Keedysville to Mr. Levey, and Mr. Levey is going to testify he deleted the email because he wants nothing to do with Mr. Holder. And so anything that has anything to do with Mr. Holder, he has deleted. So by the time the county gets the request, a search is done for the email, and they can't find it. And Mr., uh, Weddle says well there's a

preservation of rights. Your Honor, there is no way on God's green earth anyone can keep up with Mr. Holder. Preservation of rights on what? He has nine - - nine lawsuits going on. He's threatening to sue everyone. He's got a hundred - - 200 MPIA requests. From the county's perspective, an email involving Ms. Morral and her disputes with Mr. Holder, involving the Town of Keedysville, has nothing to do with Washington County. And to add insult to injury, your Honor, this is an email Mr. Holder already has. He has the email. He got it from the Town of Keedysville. So now this is another gotcha game with Washington County where he's saying, "Oh well I know that you know that this email exists because I have a copy of it." But we don't have a copy of it because what Mr. O'Neal is going to testify is, is that there is no cloud backup storage system for these emails. The county uses - - They use Office 360. The retention schedule for that is approximately 30 days. You have someone who hits the delete button in 30 days it's gone, it's vanished. So when Mr. O'Neal did the search for this email, it was already gone. Okay?

So then we get to count four, your Honor. Count four involves an allegation that on June 30 at 2 - - at 4:07, Mr. Holder sent to Mr. Downey, and to myself, a request for all emails between the Honorable Deputy, uh, Deputy

State's Attorney, including Joseph, uh, Michael, and Kenneth Shapiro, and Andrew Bright from August - - on August 4 and October 14 of 2020. Okay? Now at this point, your Honor, respectfully, I'm not sure who I'm supposed to be answering to because Mr. Holder has Adam Greivell handling some of his civil cases. He's got Mr. Weddle handling some of his cases. He has someone else handing his personal matters. This - - This - - This particular MPIA request was the result of answers to interrogatories that we filed in this case that basically then generated him asking for this information. So, um, on - - The response was technically due on July 30 of 2022 and due to an internal, and I'll acknowledge it, an internal error in my office about who the emails were to go to and who was supposed to, whether it be Mr. Weddle, whether it be Mr. Holder, whatever, um, they were not sent within 30 days. You know when they were sent? August 4. So now we have a count because there was a three or four-day delay in getting emails that were generated as a result of this case. It was certainly not a willful or wanton withholding of information under the MPIA. At best, it was an inadvertent error or oversight in terms of getting the information to Mr. Holder within 30 days, which I would respectfully submit, your Honor, is, you know what, it's - - it's human nature. We all

make mistakes and, you know, given the number of requests that Mr. Holder files, and the amount of litigation that Mr. Holder generates, its inevitable that there may be an inadvertent oversight, but it's certainly not a violation of the MPIA. And I would respectfully submit at the end of this case, your Honor find in favor of the defendants. These requests should have been sent to the State's Attorney's Office. The County Attorney's Office should never have been involved in this to begin with. This had nothing to do with Washington County.

And so, uh, I would respectfully submit that your Honor, find in favor of Mr. Downey, Mr. Bright, who were named individually in this case, and the Board of County Commissioners for Washington County. Thank you very much.

THE COURT: Okay. Thank you. All right, Mr. Weddle, your first witness.

MR. WEDDLE: Sure. Thank you, your Honor. I'm going to call Mr. Joshua O'Neal.

TESTIMONY OF JOSHUA O'NEAL

JOSHUA O'NEAL, having been duly sworn, did testify as follows:

MR. WEDDLE: Your Honor, may I sit while I inquire of the witness?

THE COURT: Sure.

MR. WEDDLE: Thank you.

DIRECT EXAMINATION

BY MR. HOLDER:

Q. Good morning, Mr. O'Neal. Um, could you state your, uh, line of work from about 2017 through the present?

THE COURT: Yeah if you would first tell us your full name.

MR. WEDDLE: Oh, I'm sorry.

THE COURT: For the record, okay?

A. Joshua Lee O'Neal. And I'm currently the Chief Technical Officer of the Board of County Commissioners and I've been with them since before the time you indicated in the IT department.

Q. Okay. And it's true you've worked in the IT department from roughly 2020, 20 - - uh, 2002 to the present?

A. 2002, yes.

Q. Yeah, okay. And, um, from January 1st, 2020, uh, have you held the same role as Chief Technology Officer for Washington County?

A. Uh, the - - initially it was, uh, the title was Division Director and it only recently changed to Chief Technological Office.

Q. Is there any appreciable difference between, I

think you said, Division Director and Chief Technology Officer?

A. No, the roles are very similar.

Q. Okay. And, um, what are your duties as Chief Tech - - uh, Chief Technology Officer?

A. Oversee the various departments relating to computers, radios, uh, graphic information systems.

Q. Okay. And in your role of Chief Technology Officer, do you assist the county in maintaining electronic data?

A. Yes.

Q. And describe that process.

A. Uh, we have various processes depending on what it is. Uh, there are not specific procedures for some things. Some records have a specific retention policy, others do not.

Q. Okay. Uh, focusing on your role as, I'll call it, CTO, Chief Technology Officer, um, you assist the county in maintaining the county issued emails, correct?

A. Yes.

Q. County issued emails accounts.

A. Yes.

Q. Okay. And are county issued email accounts, do they have the, I think it's called a domain of washco-md.net?

A. Washco-md.net.

Q. Okay. Okay. And you assist in maintaining those accounts, correct?

A. Yes.

Q. And what do you do?

A. Uh, I don't do the day-to-day provisioning of those accounts. It's handled by my staff. Uh, but if anything is required from a oversight prospective or, uh, you know sometimes when an employee leaves data has to be moved or migrated, uh, things like that.

Q. Forgive me, I don't know what day-to-day provisioning means. Can you explain what you meant by that?

A. For instance, if we get a new employee, uh, I don't do that. My staff sets up new accounts when HR brings us the records.

Q. Okay. Um, is there anything else under the umbrella of day-to-day provisioning?

A. No.

Q. Okay. Just creation of new accounts?

A. Yeah.

Q. Okay. You said you perform oversight - -

A. Yes.

Q. - - of those accounts. What - - What does that mean?

A. Uh, if any specific requests relating to those come in that can't be handled by frontline staff, I would intercede.

Q. Okay. Uh, and you maintain all of the email accounts ending, uh, all the Washington County email accounts, is that correct?

A. Yes.

Q. Okay. And you're familiar, uh, Mr. O'Neal, with, uh, the defendant in this matter, uh, B. Andrew Bright, correct?

A. I know who he is, yes.

Q. Okay. And, uh, he was the former Assistant County Attorney, is that correct?

A. As far as I know, yes.

Q. Okay. And Mr. Bright would call upon you from, uh, time-to-time to assist him in responding to PIA requests, including those - - some of those made by Mr. Holder, correct?

A. Yeah, we would get all sorts of PIA requests from the County Attorney's Office.

Q. And - - And he would ask you to assist in responding to those, correct?

A. I don't assist in responding, I would provide the results of whatever he would want and it would be up to the County Attorney's Office to formulate those into a

response.

Q. Right, but you're - - you're the one that's doing the searching to - -

A. I do the search, yes.

Q. - - to respond to the request. Yes?

A. Yes.

Q. Okay.

(Petitioner's Exhibit 1 was marked for identification.)

Q. Mr. - - Your Honor, here is a copy for you.

THE COURT: Okay. That's exhibit one?

Q. Uh, one. Sir, I'm handing you what's been marked as, uh, exhibit one. Can you identify this document?

A. Appears to be a email chain regarding a PIA request from Mr. Holder.

Q. Okay. And I'd like to direct your attention to page three and the bottom of page two of the email chain.

A. Okay.

Q. All right. And at the bottom of, uh, of page - - I'm sorry. At the bottom of page two and at the top of page three, Mr. Bright advises that Mr. Holder made a PIA request for all correspondence from morral7@msn.com, and any sheriff, deputy, county official, from May 19th to the present, correct?

A. That does appear to be what it says, yes.

Q. Okay. And Mr. Bright asked you to search for email correspondence with Miss Morral to or from any county employee for the given timeframe, correct?

A. Yes.

Q. Okay. And, uh, that is Mr. Bright asked you to search for email correspondence with Miss Bright, I'm sorry, with Miss Morral to or from any county employee from May 19th to August 3rd, 2020, correct?

A. Yes.

Q. Okay. And you performed that search?

A. Yes.

Q. How did you do it?

A. I, uh, I would, uh, search for the perimeter. I would put the time constraint in, May 19th to August 3rd, uh, searching for emails containing that email string, morral7@msn.com.

Q. Okay. Can you explain to me, uh, and perhaps for the judge, uh, who - - I'm not very technical savvy as you, what did you - - What did you search? What - - What did you actually search?

A. There is a - - There is an interface webpage that I go to that has access to the county's email store, to all of it, and you - - you input the perimeters of your search and it will run a search based on those perimeters and return a set of results.

Q. Okay. And the - - the search term you used is the morral7@msn.com email address, correct?

A. Yes.

Q. Is that the only search term you used?

A. Uh, to my recollection, yes.

Q. Okay. And you searched all email accounts ending in the washco, uh, I'll call it domain. Is that the correct term?

A. Yes.

Q. Okay. You searched all email accounts ending in the washco domain, correct?

A. Yes.

Q. And those, uh, include all offices of Washington County, correct?

A. All - - All offices that fall under the Board of County Commissioners.

Q. And those email addresses included offices in the sheriff's department, correct?

A. Correct.

Q. Such as Doug Mullendore's account, is that correct?

A. Yes.

Q. Uh, Randy Wilkinson's account, is that correct?

A. Yes.

Q. And Barry Levey and the Public Safety Manager's

email, correct?

A. Yes.

Q. Account, correct?

A. Yes.

Q. Okay. Um, the search that you performed, uh, it would have se - - it would have resulted in an - - in any email that contained the term morral7@msn.com, right?

A. Any that had not been deleted and fallen off, uh, the back of the, uh, retention schedule.

Q. Okay. Um, in other words, it would have included if morral7@msn.com was the sender - -

A. Yes.

Q. - - of the email, correct? And it would have included if morral7 was the recipient of the email, correct?

A. Yes.

Q. And if morral7@msn.com was in the body of the email, would it have included that as well?

A. Yes.

Q. Okay. And what - - If morral7@msn.com was included in an attachment to an email, your search would have captured that email, is that correct?

A. That would depend on the nature of the attachment. There are some types of attachment that the search cannot go through.

Q. And what are those?

A. I - - I cannot list that. That would be an extensive list. The email system only understands a limited subset of documents and file attachment types. So depending on the attachment or if the attachment is encrypted and requires a password, et cetera, it cannot be searched.

Q. Okay.

A. Attachments generally would not be searched.

Q. Okay, so attachments generally are not included.

A. Yes.

Q. Okay. This was a relatively easy search for you to conduct, right?

A. Yes.

Q. And within an hour you came back with the results of that search, correct?

A. Uh, it appears so, yes.

Q. Okay. And directing your attention, uh, to the bottom of page two of exhibit one. Uh, you told Mr. Bright that there were 16 emails under the perimeters specified by Mr. Holder, correct?

A. Yes.

Q. Okay. Did you read those emails?

A. No.

Q. Okay. If you didn’t, how did you know, uh, there

were 16 emails?

A. It returns the number of emails, says there are 16 emails that match the search perimeters you gave and returns them in a file that I forward on to them.

Q. Okay. Did you catalog or list these, uh, 16 emails?

A. No.

Q. Did you make any records of which emails compromise, or I'm sorry, comprised those 16 emails?

A. No, aside from the email where I responded to Mr. Bright's request.

Q. And you sent Mr. Bright the zip file, uh, with the 16 emails, correct?

A. Yes.

Q. Did you save that zip file anywhere on the county system?

A. I do not retain PIA results.

Q. And why not?

A. Uh, I consider it, uh, the County Attorney's Office responsibility to answer those and respond to those.

Q. Okay. You don't retain them because it's the county attorney's responsibility, is that correct?

A. Yes. I have no use for them once the results run.

Q. So you took - - Uh, is it fair to say you took no efforts to preserve those 16 emails?

A. Uh, I don't believe that would be accurate. I gave those 16 emails to the County Attorney's Office, which I would consider preserving.

Q. Okay. Other than forwarding the zip file to the county attorney, Mr. Bright, did you take any other efforts to preserve those emails?

A. No, there was no additional action.

Q. Okay. That was my next question. So after you sent those emails to Mr. Bright, you didn't do anything further on the assignment, is that correct?

A. Correct.

Q. Okay. Did you make any further or subsequent searches of - - of correspondence from morral7@msn.com, and any sheriff, deputy, county official, from May 19th to the present?

A. If I did so, it would have been solely as a result of a PIA request. I don't remember them all. There were a number of them.

Q. Okay. So for example, you don't remember on October 14th, whether or not - - 14th, 2020, you made another search for these same emails?

A. I don't specifically remember that, no.

Q. What about on January 21st, 2021, did you - - did

you make another search?

A. That's possible. I don't - - I don't recall.

Q. Okay.

(Petitioner's Exhibit 2 was marked for identification.)

Q. Mr. O'Neal, I'm handing you what's, uh, been marked as Plaintiff's exhibit number two. Your Honor.

THE COURT: Okay, thanks.

MR. WEDDLE: Let me - - Let me - - And your Honor, I'm going to move to admit exhibit one.

MR. KARPINSKI: No objection.

THE COURT: Exhibit one is admitted unto evidence.

(Petitioner's Exhibit 1 was admitted in evidence.)

Q. All right. Mr. O'Neal, we've marked as exhibit two, a letter from, uh, Mr. Bright to Mr. Holder. Uh, in the second paragraph - - The letter is dated, for the record, June 23, 2020. In the second paragraph, you'll see that Mr. Holder requested Mr. Bright to "Please provide all emails between the email address blevey@washco-md.net for the past three years. Please respond in 10 days with a time and cost." Do you see that?

A. I do.

Q. Okay. The very next, uh, paragraph, it says,

"The Director of Information Systems has determined that as written a search of emails sent and from blevey@washco-md.net during the requested period resulted in 45,239 emails." Uh, directing your attention to the phrase, "Director of Information Systems," was that - - is that you?

A. That was my title at the time, yes.

Q. Okay.

A. Well it referenced me. I think, uh, officially it was "Division Director" at the time.

Q. Okay. Um, one moment, please. (Pause for approximately 15 seconds.) Uh, so like, uh, before, uh, with respect to the MPIA request that we just, uh, discussed, did Mr. Bright ask you to fulfill this request?

A. Yeah I do recall this.

Q. Okay. And how did you do that?

A. I would have searched for any emails to or from blevey@washco-md.net within the three-year timeframe indicated.

Q. So any emails from Mr. Levey's Washington County's account to or from anyone else?

A. Yes.

Q. Okay. Did - - Did that include his deleted box?

A. It would have included his deleted box, yes.

Q. So would have included his - - essentially his entire email account, correct?

A. Yes.

Q. Okay. Inbox, sent box, delete box.

A. Yes. Yes.

Q. Okay. I'm sorry, you have to verbalize for the record. Uh, and the search term you used was blevey@washco.net? I'm sorry, blevey@washco-md.net, is that correct?

A. That was the perimeter, yes.

Q. Okay. Mr., uh, Bright's response that there were 45,239 emails means that Mr. Levey had that number of emails in his email account dating back from June 15, 2020 through June 15, 2020 - - I'm sorry, June 15, 2017, correct?

A. That would have been what we had available at the time, yes.

Q. You said, "what we had available at the time." Was that for the previous three years?

A. That depends. If, uh, Mr. Levey had deleted an email and then emptied his deleted items, that email disappears from the system within 30 days.

Q. If he empties his deleted items.

A. Yes.

Q. Okay. What if he just goes to his computer,

clicks "delete," it goes into his trash box, for lack of a better term, and stays there. Is it permanently deleted?

A. Depends on the circumstances. There is cleanup actions that occur depending on how large that gets.

Q. You'll - - I'm sorry, you lost me. What do you mean by that?

A. So if the deleted items grows beyond a specific size, it might be subjected to cleanup actions, but the 30 days still applies. So you - - Your 30 days is the retention period basically.

Q. Okay. I'm a - - I'm a bit confused. So if Mr. Levey deleted the email, it would go into his trash box?

A. Um-hmm.

THE COURT: That's a yes?

A. Yes.

Q. Is your testimony that if it goes into his trash box, within 30 days it's automatically deleted?

A. No. It's automatically deleted if he empties the trash within 30 days of that action.

Q. Okay.

A. Or if the deleted items grows beyond a specific size that causes the system to automatically purge it.

Q. And what size is that?

A. I believe it's 10 percent of his total mailbox

and I don't know what his mailbox size is. I think the standard is - - I think standard size is 10 gigabytes.

Q. Okay so you believe it is - - The testimony - - Or you believe it to be that if Mr. Levey's deleted box is roughly 1 megabyte?

A. Gigabyte.

Q. Gigabyte, excuse me, then it's automatically deleted?

A. It would be automatically purged and then 30 days from that it would no longer be available in the system.

Q. Yeah is - - During this deletion process, is it first in, first out? What is the - - What is the process for the deletion?

A. More or less instantaneous. I mean, it's - - it's oldest emails first of course, uh, so - - But yeah, anything that falls within the timeframe for deletion happens at the same time. If you delete everything from - - If you empty deleted items, it doesn't matter what timeframe those emails comprise, 30 days later they just all disappear at the same time.

Q. Are there any county training or county policies instructing employees not to essentially double delete files?

A. Not to my knowledge.

Q. Okay, you don't give any advice or training to

county - -

A. No.

Q. - - employees on that?

A. No.

Q. Is there - - What - - What training are county employees given as to this deletion policy? In other words, if, you know the deletion policy that you just described were if they delete an email it goes into their trash, if their trash gets so large, it's automatically deleted?

A. There is no specific training.

Q. After you, uh, after you receive requests, uh, after you received this request and fulfilled this request, that's the subject of exhibit two, um, did you make any, uh, take any actions to preserve, uh, Mr. Levey's email account?

A. I don't believe so. There - - I don't think there was a request to, uh, retain anything beyond the - - PIA request, so I think we - - I probably saved the 45,239 emails specified and would have handed those results or retained those results based on whether or not the, uh, the cost of review and duplication was going to be paid.

Q. Okay. So you did retain the 45,239 emails, is that - - am I understanding you correctly?

A. I wouldn't have retained them myself. I would have given any results to the County Attorney's Office.

Q. Okay. And what would they have done with them?

MR. KARPINSKI: Objection.

Q. If you know.

A. I don't know.

THE COURT: Wait a second. Your objection?

MR. KARPINSKI: The objection was – what would the County Attorney's Office do with them.

THE COURT: Okay, sustained. For that - - Unless you can lay a foundation.

Q. Do you know what - - Do you have any experience as to what the County Attorney's Office does, uh, with the results of Public Information Act requests?

A. I do not.

Q. Okay. Do you have any knowledge of, uh - - Let me back that up? Sir, in your - - in your Chief Technology Officer position, um, is it true that you also handle maintenance of the county's, uh, I'll call it servers, uh, maintenance of the county servers?

A. Yes.

Q. And on those servers, uh, is it true that the county's essentially records and data are saved on those servers?

A. In many instances, yes.

Q. Okay, what instance is it not?

A. I don't have the answer to things that I do not have purview over.

Q. Okay. The county attorney's, um, files are saved on the county's server, correct?

A. Either on the county's server or the county's cloud, uh, they could be. They're not required to be.

Q. Okay. Do you have any knowledge whether or not the county's, uh, if the county saved or preserved the results of a PIA request, whether those are on the county's server or cloud?

A. I do not.

Q. You do not have any knowledge of that?

A. No.

Q. No one from the County Attorney's Office told you to take any action to preserve the results of, uh, the search for the Barry Levey, uh, email account, correct?

MR. KARPINSKI: Objection, leading.

THE COURT: Do you want to respond to that?

MR. WEDDLE Yeah, this is a, um, under - - under rule 5-611(c), um, I should be able to inquire with leading questions, um, because this is a direct examination of a - - a hostile witness, an adverse party or a witness identified with an adverse party.

THE COURT: How - - How have you shown that he's an

adverse witness?

MR. WEDDLE: Because he is a - - He is a witness - - He is employed by the county and the county is - - is - - is at issue here. The county is a defendant, so he's, by nature, going to be identified with that adverse party.

THE COURT: So far, I - - I disagree. Just because he works for the county doesn't make him an adverse witness, and if anything, so far, his testimony seems to be very straightforward and not antagonistic. So at this point, treating him as a hostile witness is not permitted. That may change, so far, no go.

Q. Okay. Mr. O'Neal, um, I believe you mentioned that you, uh, sent the records to the County Attorney's Office that were responsive to this request, um, because if Mr. Holder would have paid the deposit, he would have - - the process would have, um, would have, uh, continued to produce those records. Is that correct?

A. That would have - -

MR. KARPINSKI: Objection.

THE COURT: Yeah I - - I don't see where that was established.

Q. You testified earlier about a deposit, you mentioned the word "deposit," did you not?

A. Yes.

Q. And what - -

A. Well I don't know that I said "deposit." I said, "the cost of review and duplication of the emails," that I'm reading from your exhibit.

Q. Okay. And if Mr. Holder would have paid the cost of review and duplication, um, what efforts would you take to collect those emails?

A. At that point, the emails would have already been collected and I would not have taken any additional action. At that point it was - - it would have been in the purview of the County Attorney's Office.

Q. Okay. Mr. O'Neal, as the, um, Chief Technology Officer, are you familiar with the term "preservation letter?"

A. In relation to what?

Q. In - - Do you have any understanding of that term?

A. I understand the definition of the words, but in relation to what?

Q. In relation to documents or data or information that is - - that is contained within the county's email system.

A. I understand the intent of the words used in such context.

Q. Okay, what is your understanding of that?

A. That if a letter requesting preservation was

received regarding some specific documents, we would be obligated, suppose (unintelligible) to perform such retention.

Q. Okay. And in your course as, uh, Chief Technology Officer you have received such letters, correct?

A. I don't believe so.

Q. You've never received one?

A. I don't specifically recall receiving one, no.

Q. Are you familiar with the term "litigation hold?"

A. Yes.

Q. And what - - what is your understanding of that term?

A. That is an action taken where we mark a specific set of emails or inboxes, uh, to retain all messages and - - and prevent any sort of automatic deletion or anything like that.

Q. Have you had occasion to, uh, receive a litigation hold from opposing counsel or opposing party?

A. I don't believe we've ever had to do that, no.

Q. Okay, so you've never, uh, you've never, uh, acted to pre - - to preserve emails or - - or documents in response to a preservation letter or a litigation hold?

A. We have acted to preserve emails internally based

on requests from different, uh, county administrators or the commissioners on occasion.

Q. Okay, but not with respect to litigation, correct?

A. It's possible it could be a result of litigation that I'm not aware of, but I don't know that.

Q. And what do you - - What do you generally do when you receive those?

A. If I would receive a request for a litigation hold, I would go in and mark the specific mailbox, user mailbox that was identified in the request as a litigation hold and we retain that indefinitely until told - - until I'm told otherwise.

Q. Okay. And you haven't - - Have you done that, uh, with respect to the requests in Defendants' - - I'm sorry, in Plaintiff's exhibit one and two?

A. Uh, this - - These would not, uh - - The results of this are not the same thing as a litigation hold. I believe that's a misunderstanding. Uh, a litigation hold applies to a specific account and not to a specific subset of emails from an IT prospective.

Q. Okay. Your Honor, I'd move to admit, uh, Plaintiff's exhibit two.

MR. KARPINSKI: No objection.

THE COURT: Plaintiff's two is admitted. Yes,

Plaintiff's two is admitted.

MR. WEDDLE: Thank you, your Honor.

(Petitioner's Exhibit 2 was admitted in evidence.)

(Petitioner's Exhibit 3 was marked for identification.)

Q. Mr. O'Neal, I'm handing you what has been marked as Plaintiff's exhibit three. Would you review that document please? (Pause from approximately 20 seconds.) Okay, the subject of the email - - Oh, I'm sorry, this is a email, uh, for the record, from - - from Mr. Holder, uh, to Rachel McCarty, Kirk Downey, and Andrew Bright. Uh, the email from Mr. Holder is dated Wednesday, December 23, 2020 at 2:44 p.m., um, the subject of the email is "Preservation of Evidence," and at the time it says there's an email attachment titled, "Washco Preservation Letter." Are you familiar with this email and its attached letter?

A. No I don't believe I've seen this.

Q. Okay. Is it fair to say, sir, if you, uh, if you would have not been involved in the preservation and withholding of the documents requested in this letter, no one else at the county, to your knowledge, would be?

MR. KARPINSKI: Objection.

THE COURT: Sustained. Can you just rephrase that?

Q. You - - You did not take any action with respect to this preservation letter, is that fair to say?

A. Yes, I was not aware of this letter.

Q. Okay. Um, do you know anyone else at the county who would have been aware of this letter, uh, and taken action to preserve the evidence, other than yourself?

A. I can't speak to who else might have been aware of something I didn't - - that I wasn't aware of.

Q. Okay. Would anyone else, uh, in the, I'll call it the county's IT department, would they be responsible for preserving evidence?

A. No.

Q. And that - - that would fall squarely on your shoulders correct?

A. Yes.

Q. Okay. Mr. O'Neal, um, in your time with the county, has the county ever had a records retention policy or guidelines with respect to email communications?

A. No.

Q. I'm sorry?

A. No.

Q. Okay. Does the county, um - - How does the county define - - define, uh, what public records are - - what public records, for example, an email are retained

that may be subject to inspection?

MR. KARPINSKI: Objection, your Honor. Calls for a legal conclusion.

THE COURT: Yeah, can you - - can you rephrase that?

Q. Does the county make any, uh, determination as to what records are retained that may be subject to inspection?

MR. KARPINSKI: Objection, your Honor. Same objection.

MR. WEDDLE: I'm asking directly.

THE COURT: You may be able to set a foundation for that, find out what personal knowledge he might have or knowledge from internal policies, if they exist.

Q. Mr. O'Neal, um, is there - - as CTO, have you attended any sort of training or any training on, uh, what records must be preserved and kept and what may be subject to deletion?

A. No.

Q. You've attended no training and you've given no training on that point, is that correct?

A. Correct.

Q. To your knowledge, um, does the county have any training or policies as to what records are kept or preserved and what records are allowed to be deleted?

A. The IT department does not make any such policy.

Q. Okay. I'm not - - I appreciate that. I'm not asking about making the policy, but I'm talking about whether a policy exists. Do you have any knowledge of whether such a policy exists?

A. Not to my knowledge.

Q. Can we - - I'd like to sort of revisit your testimony on, um, the - - I believe you used the term "retention periods" - -

A. Yes.

Q. - - with respect to emails? What do you mean by that?

A. Those are the default retention policies in Microsoft Exchange, which is the system that contains the email, the 30-day window I referenced earlier. That is how long something is retained once its deleted. That's a - - Every action a user can take to delete an email will still result in a, uh, 30-day window where we can still get it back no matter what the user has done.

Q. Okay.

A. So that is the - - That is what we consider the retention period, that 30-day window.

Q. That 30-day window only applies to deleted emails, is that correct?

A. I believe that's correct.

Q. There is no retention period with respect to non-

deleted emails, correct?

A. Correct.

Q. Okay. There is no retention, um - - There's no limiting retention for an email account based on size, is that correct?

A. Correct.

Q. Okay. So Mr. Levey or someone else could have 60,000 emails from present back 10 years, hypothetically, correct?

A. Yes.

Q. Okay. And is that why Mr. Levey's email inbox and sent box and delete box contained over 45,000 emails?

A. Likely so, yes.

Q. Okay. Is it true that the county doesn't, um, engage in what I'll call archiving of emails?

A. Not to my knowledge.

Q. So in other words, whatever a user's emails are in their account, um, they can access it. They are not moved to another storage location, correct?

A. Correct.

Q. Okay.

A. Not unless they do it themselves. We - - We don't know that.

Q. What - - I'm sorry, what do you mean by that?

A. If a user removes an email from their system and

archives it somewhere else, we don't have any policy to prevent that and I also would not have knowledge of that.

Q. So there's no policy to prevent a user from taking the contents of their inbox and moving it to a personal, archivable location?

A. There is no policy to prevent that.

Q. Okay. Does the county have records of record management staff?

A. I'm sorry?

Q. Does the county have a records management staff or does that fall under your purview?

A. Not under my purview.

Q. Is there - - Is there a separate records management staff, um, other than yourself?

MR. KARPINSKI: Objection as to the form of the question, your Honor. I'm not even sure that we've defined what a records management staff is.

THE COURT: Yeah well, that last point is true, but also, um, it sounded like the question assumed a fact not in evidence, but why don't you just back up and see if you can - -

Q. Does - - Does the county have any, uh, staff members, employees that - - that their responsibility is to maintain records?

A. I'm sure there are, but I don't specifically know

who retains what records.

Q. Okay, what about electronic records? Does the county have any, uh, staff that maintain electronic records or is that you?

A. I don't know of any specific staff that that is their sole responsibility.

Q. Okay. Does the county engage in any training of its employees regarding the deletion of emails?

A. Not to my knowledge.

Q. Mr. O'Neal, the contents of a county - - of the county email accounts, are those backed up?

A. In certain cases for up to 30 days.

THE COURT: Do you say, "or up to 30 days?"

A. For up to 30 days.

Q. What certain cases are those?

A. If we have a local copy of an inbox of a server that is being backed up, that may occur. The cloud - - The email box that are kept in the cloud are not separately backed up.

Q. Do you know whether, uh, Mr. Levey's email account is kept in the cloud?

A. It is.

Q. Okay and those, you say, are not backed up.

A. No. Not - - Not in any sort of separate system.

Q. Why is that?

A. Cost, complexity, staff.

Q. What complexities is associated with keeping - - backing up an email box in a cloud?

MR. KARPINSKI: Your Honor, I'm going to object to the - - to the relevance of this. I mean the scope of this case is very narrow and I don't - - I fail to see how any of this is really relevant to any of the issues that your Honor needs to preside over.

MR. WEDDLE: Your Honor - -

THE COURT: Well I'll give counsel a chance to reply to that. It would seem that it could have some relevance.

MR. WEDDLE: Yeah it - - it – it - - frankly it's beyond comprehension that, uh, there is no way - - That one, county employees are allowed to delete emails in any form or fashion if they wish. And then they're gon - - If they delete it, they're gone after 30 days. Two, the purpose of this case is that the county has an obligation to preserve public records and - - and emails, um, for example, in Mr. - - Mr. Levey's emails talking about public business are public records. So it seems to me that the county is falling down on its obligation to its citizenry to maintain public records so that folks like Mr. Holder, or anybody else, can go back and get them, especially when they pertain to him. So I'm trying to

explore, frankly, the county's lack of policy, lack of oversight, lack of - - lack of backing documents up on a cloud, um, and I'd like to probe that. I think its germane to showing sort of the absurdity of the fact that the position taken is that we can't - - Mr. Holder requested this email, uh, it existed at one point and now it doesn't exist. We can't get it. And frankly, that period of time wasn't that far away. I mean he requested it in June of 2020, June of 2020, and was told later, uh, and we haven't gotten to that document yet, but was told later that we simply can't get it.

THE COURT: Are you, um, able to refine this to the period after the preservation letter, for instance? That's counsel's, Mr. Karpinski's objection, as well it's a broad, such a broad timeframe and would seem, however - - but would seem, however, to be relevant if it were specific to the timeframe - -

MR. WEDDLE: Yeah I can - -

THE COURT: - - at - - after the preservation letter.

MR. WEDDLE: Yes, your Honor.

MR. KARPINSKI: Well - -

THE COURT: It may be that it was always related.

MR. KARPINSKI: Well, your Honor, I'm not - - I don't know if the Court's had an opportunity to read the preservation letter, but the pre - - preservation letter

does not involve anything involving the sheriff's office, one. And two, it - - it, quite frankly, is so convoluted that I don't know what one would preserve anyway. But we're here on four distinct, uh, issues.

THE COURT: Yeah.

MR. KARPINSKI: Three really distinct issues. And whether the county's policy with respect to document retention is appropriate or not, that doesn't go to whether there was a willful violation of the Maryland Public Information Act. The issue is simply, you know, if a request came in, did the county go ahead and do a search to go ahead and try and find the document, did the document exist, did the docum - - was the document willfully withheld, uh, for an improper purpose? Those are the issues that are before the Court. Uh, just generically discussing at length the county's policies with respect to IT and what it uses in terms of storing documents and whether employees are given training on whether they can delete documents, uh, that - - that's not before the Court in terms of what is a violation of the Maryland Public Information Act.

THE COURT: Okay. Particularly - - I mean your objection is relevance and I can understand the objection, but particularly as a bench trial, um, well relevance can be questioned, I'm going to allow the

plaintiff to pursue its - - this aspect of a theory of at least part of its case, his case, and as evidence is presented and further into the trial, or at the end of the trial, the Court can give the evidence the weight, if any, it deserves at that time as far as relevance. So the objection is overruled.

MR. KARPINSKI: Thank you, your Honor.

MR. WEDDLE: Thank you, your honor. And I'm sorry, scrambling. I don't mean to be disrespectful of your Honor, but your Honor raised a point, and I'm trying to find - - I'm struggling to find the letter that I'm looking for. If your Honor will just bear with me for a second.

THE COURT: Okay. (Pause for approximately 20 seconds.)

MR. WEDDLE: I believe I've located the letter.

THE COURT: Why don't we take a short break now, a mid-morning break? We'll break again about 12 for the midday break. So give you a chance to scramble there and we'll get back shortly, let's say about 10 minutes.

MR. WEDDLE: Thank you.

MR. KARPINSKI: Thank you, your Honor.

(Whereupon at 10:31 a.m. court was in recess. At 10:45 a.m. court reconvened and the following ensued:)

THE COURT: Good morning. Please have a seat. I'll

note that counsel and parties are present and, uh, we'll resume with direct examination. Mr. Weddle.

(Petitioner's Exhibit 4 was marked for identification.)

Q. Thank you, your Honor. Mr. O'Neal, I'm handing you what has been marked as Plaintiff's exhibit four. Could you review that letter please? (Pause for approximately 10 seconds.)

A. All right.

Q. Um, Mr - - For the record, uh, Mr. O'Neal, this is a letter from, uh, the Law Firm of Karpinski, Cornbrooks & Karp, from Mr. Karpinski sitting to my left, um, to Mr. Holder dated September 21st, excuse me 27th, 2021. Do you see that?

A. I do see that.

MR. WEDDLE: Okay. Your Honor, I'm just gonna, uh, move to admit this right now, uh, as exhibit four. I can't imagine there's a dispute.

THE COURT: Any objection?

MR. KARPINSKI: No objection.

THE COURT: Or do you need to review it? Okay. Plaintiff's four is admitted.

(Petitioner's Exhibit 4 was admitted in evidence.)

MR. WEDDLE: Thank you. And while we're here, I

guess, I move to admit exhibit three, if there's no objection as well.

THE COURT: Okay.

MR. KARPINSKI: Uh, no objection.

THE COURT: Okay, three is admitted.

(Petitioner's Exhibit 3 was admitted in evidence.)

Q. Thank you. Uh, Mr. O'Neal, um, in the first paragraph you'll see it says that, uh, Mr. Karpinski is in receipt of email - - of a email correspondence and he references several previous 2020 requests, including those dated June 15th and June 23rd for blevey@washco-md.net emails. Do you see that?

A. I do.

Q. And that was - - That's referencing the, uh, the previous requests that we were discussing, uh, for Mr. Levey's emails account.

MR. KARPINSKI: Objection. Leading - -

Q. Email accounts, correct?

MR. KARPINSKI: - - your Honor.

THE COURT: They're referenced in the letter?

MR. WEDDLE: Right.

THE COURT: Overruled.

Q. Is that correct, sir?

A. It does appear to be correct, yes.

Q. Okay. And if you turn to the second, uh, page of the letter, uh, under the - - the first - - well maybe the third paragraph, it says, "The County's Director of Information Systems has conducted a search of the county's email system based on the search perimeters set forth in your request." Do you see that?

A. I do.

Q. You, uh, you were the county - - Were you the County Director of Information Systems referenced therein?

A. Yes.

Q. Okay. And if you - - If I can focus your attention on the last paragraph of the letter, um, it notes - - it says, "Please note that, although the county email system is administered by County Division of Information Technology, it is the discretion of each individual system user as to how all communications are saved and filed, including emails sent or received through the email account. As a means of organization, some users delete emails as soon as related matter - - as a related matter has been handled. Deleted emails are no longer accessible after a certain period of time. The established email system retention settings no longer cover the date range you've indicated. We found nothing to satisfy your request no matter how the search

perimeters are manipulated due to system retention constraints." Do you believe that to be true?

A. I do.

Q. Okay. And why so?

A. Uh, because the 30-day limit previously indicated would have applied had a user deleted all the emails relevant to a specific situation or conversation.

Q. Do you have any personal that Mr. Levey deleted, uh, any of the emails in his email inbox?

A. No.

Q. Okay. Um, do you have any personal - - And that means you don't have any personal knowledge whether Mr. Levey double deleted any emails, correct?

A. Correct.

Q. Because he would have had to double delete them for the 30-day retention period to apply and those to be completed vanished from the system, right?

A. Correct.

Q. Okay. This letter suggests then that the Levey email was deleted sometime, if it was in fact deleted, was deleted sometime between, uh, the June of 2020 request and the date of this letter, which is September 27, 2021, is that correct?

A. That would be correct.

Q. Mr. O'Neal, before we were breaking, we were

talking about, um, I believe we were talking about - - I asked you about whether the county's emails were kept in the cloud. Okay?

A. Yeah.

Q. And, uh, or backed up, I'm sorry, backed up by the cloud and I think you said they were not due to cost, complexity, and staff. Is that correct?

A. That's correct. They are not kept in a separate system from the Microsoft Office 365 Cloud.

Q. I'm a little bit co - - I'm a little bit confused about your qualification. Can you explain that?

A. Uh, I believe, uh, there might be a misconception about the term "backup." Microsoft themself has service level agreements that guarantee data availability, replication, things like that. So to say the data is not backed up would not be accurate. To say that the county does not separately back it up in a separate system from Microsoft, Microsoft's own, would be a more accurate statement.

Q. Okay. And why does the - - And the county doesn't separately back it up because of cost, complexity and staff, correct?

A. Correct.

Q. What would the - - There is automatic backup of cloud storage, is there not?

A. There can be.
Q. Okay. And, uh, there's - - there's vendors that provide that service, are there not?
A. Correct.
Q. Okay. And that automated sto - - automated backup doesn't require staff, does it?
A. Somebody would have to manage that - - that process and for instance, if a PIA request were to be run against backed up data, that would be labor intensive. So we don't separately backup systems, nor do we have the staff to maintain such a process or conduct requests based on that data.
Q. Okay, but my point is simply this, and tell me if I'm wrong, the, uh, the automated backup system doesn't require staff to do - - do anything, correct?
MR. KARPINSKI: Objection. Relevance.
THE COURT: Overruled.
A. I don't know of any backup system that would require no staff oversight.
Q. How - - How many - - How many staff members would require oversight of a cloud backup of an email system?
A. At least one.
Q. Okay, just one.
A. Yes.
Q. Not in their fulltime roles, correct?

A. You should have somebody dedicated to backup on staff, at least one person that that's their fulltime job regardless of the automation level.

Q. You said complexity. I don't - - What do you mean by that?

A. That's - - I can get into a very technical description of what's required, but it's not just a click here and click there and it's done. There is a lot of set up and if something goes wrong with it, if you need to pull data back, that's - - that's all - - for a lot of the systems that I know of that's - - that's a series of complex operations that somebody has to maintain.

Q. And work with whoever the vendor is, correct?

A. Yes.

Q. Okay. And the vendor assists with that, right?

A. Usually not. I don't think Microsoft would really assist with that.

Q. The county has other cloud storage, does it not?

A. The county has several cloud storage platforms.

Q. And those are backed up?

A. Not all of them.

Q. Some of them are though?

A. Some of - - Some of the backup other sections, but we do not backup cloud storage as a standard practice.

Q. Okay. You handle - - You oversee the backup, uh, of the county's, uh, information that - - that occurs, correct?

A. Yes.

Q. Okay. Has, um - - You - - You know Mr. Levey obviously, correct?

A. Yes.

Q. Um, has Mr. Levey ever indicated any personal animosity that he may harbour towards Mr. Holder?

A. Not to me.

Q. No further questions, your Honor.

END DIRECT EXAMINATION

THE COURT: Okay, any cross?

MR. KARPINSKI: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. KARPINSKI:

Q. Uh, Mr. O'Neal, would you please, uh, I'm directing your attention to exhibit one.

A. Okay.

Q. And, um, this is the email that begins from Mr. Holder, dated August 3 of 2020, and is sent to Mr., uh, to Mr. Bright, correct? With a copy to Ms. McCarty, correct?

A. Uh, yeah. Yes.

Q. Okay. Now Mr. Bright's response to you at the

very bottom of page two, it says, "See PIA request below. As I have no idea to define 'county official' we should probably search for email correspondence with this person to or from any county employee for the given timeframe." Do you see that?

A. Yes.

Q. Okay. Now as I understand the county's email system, um, it is on a platform of washco-md.net, correct?

A. Yes.

Q. Okay. And in addition to employees of Washington County having access to that email domain, there are also other state agencies that also have access to that, uh, website, correct?

A. Who have email addresses on that system?

Q. Yeah, for example, the sheriff's office, they use, uh, washco-md.net, correct?

A. Yes they use that - -

Q. Okay.

A. - - that domain.

Q. And the State's Attorney's Office uses washco-md.net, correct?

A. Yes, correct.

Q. Okay. And so, um, both of those agencies would be on that platform, is that fair to say?

A. Yes.

Q. Okay. And you have an understanding of whether those agencies are state agencies or county agencies?

MR. WEDDLE: Objection, your Honor. Calls for a legal conclusion.

THE COURT: Find out if he's got personal knowledge or strong enough basis to answer that question. So lay a foundation by a question or two.

Q. Okay. Well actually, are you - - are you familiar with the distinction between, uh, who would be considered a county employee as opposed to a state employee?

A. Broadly yes. There's a lot of nuance to that from - - from where I stand, but - -

Q. Okay. Are you aware that the sheriff is a state elected official?

A. Yeah.

MR. WEDDLE: Objection, your Honor.

THE COURT: Overruled.

A. Yes.

Q. Are you aware that the state's attorney is a state elected official?

A. Yes.

Q. Okay. You live here in Washington County, correct?

A. Yes.

Q. And they appear on your ballot, do they not?

A. Yes.

Q. Okay. So, um, you ran a search that basically addressed, uh, anyone who had had any correspondence with morral7@msn.com, correct?

A. Correct.

Q. Okay. And that would include individuals in the sheriff's office as well as in the State's Attorney's Office, correct?

A. Yes.

Q. Okay. And then you would have delivered those results to Mr. Bright for him to review and decide what should - - should or should not be produced, correct?

A. Correct.

Q. Now, you were asked some questions, if I could direct your attention to exhibit two, and this involves a search of all emails sent and to blevey@washco-md.net. Do you see that?

A. Yes.

Q. Okay. And just so that I'm clear, Mr. Levey - - Strike that. You're familiar with Mr. Levey, correct?

A. Correct.

Q. Is Mr. Levey, uh, does he work out of the sheriff's office?

A. Yes.

Q. Are you familiar with what Mr. Levey's title is at the sheriff's office?

A. Yes.

Q. What is Mr. Levey's office with the sheriff's office?

A. Public Safety Systems Manager.

Q. Okay. And to your knowledge, has he been at the sheriff's office during, um - - Well strike that. How long have you known Mr. Levey?

A. It's been a very long time. He came in there shortly after I left the sheriff's office for downtown.

Q. Okay. Has he always been out at the sheriff's office as far as you know?

A. Yes.

Q. Okay. Now with regard to the 45,239 emails, you were asked some questions about that before. Do you - - Sitting here today, do you know whether you actually downloaded the 40,239 emails or you advised the County Attorney's Office that that search yielded that number of emails?

A. I believe I would have downloaded them.

Q. Okay. Do you know for certain that that's the case?

A. I don't recall. That would be my standard

practice though.

Q. Okay. And I take it you - - Did you have any role in determining the cost estimate of $10,000 to produce the records?

A. No.

Q. Okay. Um, do you have an understanding of whether Mr. Holder ever paid the ten-thousand-dollar deposit to have the emails produced?

A. I do not.

Q. Um, direct - - directing your attention to exhibit four. Would it be fair to say that in and around September of 2021 you were asked to do a search for, uh, emails sent on June 2, 2020 to blevey - -

A. Yeah.

Q. - - @washco-md.net?

A. Yes.

Q. Okay. And you did that search I take it?

A. I - - I would expect so, yes.

Q. And you did not find any, uh, any responsive documents, is that fair?

A. I seem to recall there were not any responses to that search.

Q. Okay. Um, how long have you been in the, uh, in the world of IT?

A. Since like - - Professionally or, uh, in general?

Q. That's true. Let's say professionally. How long has your - - Has long has you vocation been in the world of information technology?

A. Since 2000.

Q. Okay. And you came to the county two years thereafter?

A. Yes.

Q. Okay. And are you aware of any requirement that the county have some sort of, uh backup system beyond that which there is otherwise provided by Office 360?

A. I'm not aware of that, no.

Q. That's all I have. Thank you.

END CROSS-EXAMINATION

THE COURT: Okay. Any redirect?

MR. WEDDLE: I - - I do, briefly, your Honor.

REDIRECT EXAMINATION

BY MR. WEDDLE:

Q. Um, Mr. O'Neal, I don't - - I didn't quite understand or maybe missed your testimony. Um, I think Mr. Karpinski asked you with respect to exhibit four, the September 27, 2021, uh, letter. Was it your testimony that you conducted - - on September, uh, 27, 2021, you conducted a search for blevey email addresses? I'm sorry, emails, um, for the pats three years?

A. Uh, was that the subject of exhibit four?

Q. Yeah.

A. Or exhibit two?

Q. Well - - Let me - - Let me ask it in a different - - different way. Maybe I misheard your testimony. Um, I - - I believe you said that in response to the September 27th, 2021 letter, you - - you conducted some searches. Is that what you testified to?

A. I would have conducted any searches requested, yes.

Q. And what were those?

A. I don't have a list of those. There were a number of PIA searches that Mr. Holder made over the years.

Q. Okay. Uh, do you recall whether you con - - you again conducted a search for Mr. Levey's email account on September 27, 2021?

A. That sounds correct, yes.

Q. Okay. Um, I believe you said it was your practice, your standard practice to, um, to forward the responses of a PIA request to the county attorney, is that correct?

A. Yes.

Q. Okay. Going back to, uh, Morral/Michael's request, emails that was the subject of Plaintiff's exhibit one, uh, you forwarded those to the County

Attorney's Office, you testified to, correct?

A. Correct.

Q. Okay. Um, and you forwarded those via email, correct?

A. Either email or we have an internal system for, uh, larger files if it was too big to attach to an email.

Q. Okay. But this was in a zip file, correct?

A. It usually is, yes.

Q. And that's not a large file, is that correct?

A. It can be.

Q. It - - This had purportedly you said it had 16 emails, correct?

A. It's not likely to have been a large file.

Q. Right, so you likely would have emailed that to Mr., uh, Bright, correct?

A. Correct.

Q. Okay. And that email would have been in your sent folder, yes?

A. Yes.

Q. And you didn't double delete that email, correct?

A. I clean out my deleted items folder fairly regularly.

Q. But that was in your sent folder, correct?

A. I keep that clean too because that gets pretty large.

Q. Okay. So is it your testimony that you - - you deleted, uh, the response to this PIA request?

A. I would expect so, yes.

Q. And you double deleted it.

A. I empty both sent items and deleted items on a regular basis, so yes.

Q. Okay. Uh, same line of questioning for the, uh, the June 23, 2020, uh, response, uh, to Mr., uh, for the Levey emails. You sent that via - - Did you send that via, um, email to Mr. Bright?

A. Either Mr. Bright or possibly, uh, Rachel McCarty. Sometimes she was the one who passed the PIA request to me. Which specific one?

Q. The subject of Plaintiff's exhibit two, the Levey emails? Would you - - Would you have emailed the responses of those?

A. Well that would have been exceptionally large. That would have probably gone through the internal file transfer system.

Q. Okay. And what, uh, what - - Are those internal files, are they maintained as well?

A. No. That's - - They're - - They're only kept until they're picked up. So you send a notice saying there's a file waiting for you. The person picks it up and that's it, it's gone. It's wherever they put it.

Q. Okay. There is no backup for the internal file transfer?

A. No.

Q. Um, does it show whether or not the document was downloaded?

A. Yes.

Q. Okay. And if it was downloaded, it would go onto the county's server, correct?

A. I could go anywhere. They could put it on a thumb drive. I wouldn't know.

Q. Okay. Um, have you searched for that file?

A. No.

Q. Thank you Mr. O'Neal. No further questions.

END REDIRECT EXAMINATION

THE COURT: May Mr. O'Neal be excused?

MR. WEDDLE: Yes.

MR. KARPINSKI: Yes, your Honor.

THE COURT: Thanks, Mr. O'Neal.

MR. KARPINSKI: Mr. O'Neal, you're going to want to leave those exhibits there. Please hand them to the clerk.

MR. WEDDLE: Yes.

THE COURT: Yeah. You're still - - Mr. O'Neal, you're still under the rule on witnesses in terms of being released. You can sit in here if you want, but you

still can't be talking to other witnesses.

MR. O'NEAL: Yes, your Honor.

THE COURT: Okay. Thanks.

END TESTIMONY OF JOSHUA O'NEAL

MR. WEDDLE: I'd like to call Barry Levey next.

THE COURT: Mr. Levey, if you could come over this way by the wall. And then just remain standing there once you get there and we'll swear you in.

TESTIMONY OF BARRY LEVEY

BARRY LEVEY, having been duly sworn, did testify as follows:

DIRECT EXAMINATION

BY MR. WEDDLE:

Q. Good morning, Mr. Levey. Uh, could you state your name for the record please?

A. Barry Levey.

Q. And Mr. Levey, I represent Justin Holder, sitting to my right. You know Mr. Holder, is that correct?

A. I do.

Q. Could you describe your relationship with him?

A. He's my son-in-law.

Q. Okay. And, um, you - - What are your feelings towards Mr. Holder?

A. My feelings towards Mr. Holder?

Q. Yeah. Yes.

A. I - - I don't actually have any feelings for my son-in-law at this moment.

Q. What do you mean by that?

A. I mean that this is the third court case that I am attending and we're answering the same questions repeatedly.

Q. Well sir, respectfully, I haven't asked you very many questions, so how - - how do we know that you're answering the same questions.

A. You're absolutely right. What are my feelings towards Mr. Holder?

Q. Yes sir.

A. He's my son-in-law.

Q. Do you have any animosity towards Mr. Holder?

MR. KARPINSKI: Objection, your Honor.

THE COURT: Well strictly speaking, potentially go toward bias. Overruled.

A. Do I have any animosity?

Q. Yes sir.

A. Not until this court cases started.

Q. Okay. Let's take a step back. When did you meet Mr. Holder?

A. 15 years ago.

Q. Okay. And, uh, you had a good relationship with him at that time?

A. I did.

Q. Okay. And when did that change?

A. When he became very obtuse. Within the last three or four years.

Q. Okay, thank you. What do you mean when he became very obtuse? What do you mean by that?

A. Everything - - Everything was an argument.

Q. Was there a - - Was there a specific period of time when, uh, things - - when your relationship deteriorated with Mr. Holder?

A. His political views became very out there.

Q. Okay. Without getting into what the - -

A. Yeah, let's not.

Q. Without what those are, uh, I'm asking for a time period. Is there a specific time period frame of reference that we could say when your relationship deteriorated?

A. Within the last five - - four or five years, um, I was a cou - - a council member within the Town of Keedysville and it became very apparent that Justin needed things from the town that approaching me that I couldn't possibly perform or do or be a part of.

Q. Is there a - - a specific instance where we could pinpoint a date when your relationship deteriorated?

A. No I - - I can't give you a specific date.

Q. Okay. Just within the past four or five years.
A. Yep.
Q. Okay. Did Mr. Holder ever ask you to recuse yourself on the - - on the town issues that you just mentioned?
A. Absolutely.
Q. And did you do that?
A. Yes.
Q. And what were those - - what were those issues related to?
A. Water line and a sewer line.
Q. To what properties?
A. Properties that he owns on Antietam Drive.
Q. Do you know what the addresses of those are?
A. Not offhand.
Q. If I said 25 and 28 Antietam Drive, does that sound right to you?
A. I - - I have no idea.
Q. Okay. Where do you live, sir?
A. In Keedysville.
Q. Uh, and how long have you lived there?
A. Going on 32, three years.
Q. And are you familiar with the properties on Antietam Drive that - - that you just mentioned?
A. Yes.

Q. You just don't recall the, uh, the addresses of them.

A. I have attempted to erase this.

Q. What do you mean by that?

A. I'm trying to put this all out of my mind.

Q. When you say you've attempted to erase this, what do you mean by that?

THE COURT: Mr. Weddle.

MR. WEDDLE: Yes sir?

THE COURT: I did allow testimony earlier over objection because of potential bias, but I think it appropriate to get into something substantive related to this case before you try to develop more potential bias. Because right now, this is all personal stuff as I can tell and not related to the case.

MR. WEDDLE: Your Honor, I - -

THE COURT: When bias becomes relevant, which I assumed at the beginning was fine to set that groundwork, but I think we've gone too far at this point.

MR. WEDDLE: Thank you, your Honor. I was just, uh, responding to one of the points Mr. Karpinski made in his opening about the personal animosity.

THE COURT: Well opening is not evidence so - -

MR. WEDDLE: I understand. Um, okay. Mr., uh, Levey, would you describe your line of work from

approximately 2017 through the present?

A. I work for the Washington County Sheriff's Office.

Q. Okay. In what role?

A. Their Public Safety Systems Manager.

Q. What - - What does - - What does that do? I'm sorry.

A. Computer-aided dispatch, records management, jail management, software, hardware.

Q. So you too work in sort of an information technology role with the sher - -

A. I do.

Q. - - the sheriff's department?

A. I do.

Q. Okay. And you've done that, uh, from 2017 to the present, correct?

A. Yes.

Q. Uh, prior to 2017, did you have the same role?

A. I've been doing that role since 2005.

Q. Okay. And is that your fulltime occupation?

A. It is.

Q. And, uh - - Okay. In addition to that role, you also used to work with the Town of Keedysville, correct?

A. That is correct.

Q. Okay. And in what capacities did you work with

the Town of Keedysville?

A. I was a councilman and chairman of the water board.

Q. And you stopped becoming a councilman when? Please remind me.

A. Uh, two, two and a half years ago.

Q. Okay. In June of 2020, were you a councilman?

A. I can't say specifically what day I resigned.

Q. Okay. Do you recall - - We'll use Covid as a time period because that seems to - - that seems to have impacted all of us. Do you recall whether you were still - - whether you were a councilman during the initial Covid outbreak in March of 2020?

A. I can't. I couldn't tell ya.

Q. Do you hold any role currently with the Town of Keedysville?

A. I do not.

Q. When did your last role with the Town of Keedysville end?

A. When I resigned.

Q. From the council two and a half years ago approximately?

A. Yeah.

Q. Okay. Uh, you mentioned you were the chairman of the water board?

A. Yes.
Q. Are you still the chairman of the water board?
A. I am not.
Q. When did you stop becoming chairman of the - -
A. When I resigned.
Q. Okay.
A. From the town business.
Q. Okay. You resided from everything related - -
A. Everything.
Q. - - related to the town. Okay. Uh, what was your - - What were your duties, uh, in regard to the Keedysville Water Commission?
A. Well it wasn't day-to-day operations. We partner with the Town of Boonsboro for water filtration and so on. So my role was at times to flag clients that their water meters were broken or that we've identified problems in their residence. At times it had to do with water consumption and that their consuming three times what they normally would be consuming. We get reports that - - I guess, that indicate that there's a problem at the property.
Q. Is - - Is that your - - Is that it or is that all your roles?
A. We had a - - an event where, uh, where we were doing water meter replacements, so we had to get on some

sort of schedule to get a contractor in. The town had a major water improvement project, so we had infrastructure that needed remedial maintenance, for example, a water tank that needed periodic painting and inspections.

Q. What about - - Were you involved in extending water to properties that previously weren't connected to the town's water sources?

MR. KARPISKI: Your Honor, respectfully, I mean I realize this is a bench trial, but this is really - - There's a very narrow scope to this MPIA request case - -

THE COURT: Yeah.

MR. KARPINSKI: - - and I don't see how any of this is relevant. And it's really just an opportunity, quite frankly, as the witness has said, he has testified in two other proceedings. There are a whole litany of other proceedings involving Mr. Holder.

THE COURT: Yeah well I can interrupt you there. Um, tie together what you have had the witness testify to and what you intend or believe he will and how that relates to this case, Mr. Weddle.

MR. WEDDLE: Your Honor, one of the issues is going to, I - - I presume is going to be, um, public interest. Okay? And I think the argument is going to be that these emails, um, did not serve any public interest and Mr. Holder, you know, it's our position that they do. Um,

this animosity, these emails, these emails generated from Mr. Holder's, you'll hear, I think, when we put Mr. Holder up on the stand, that these emails generated from his quest to get public water and sewer to the properties, 25 and 28 Antietam Drive. And Mr. Levey was involved in that. And - - Which is one of the reasons Mr. Holder sent these requests. And the fact of the matter is that, um, these emails have gone missing, there is animosity, um, these emails are searching for records between parties who, uh, Ms. Morral, the town is treating differently. Mr. Holder wants to know why. Mr. Holder wants to know why they're treating him differently, um, and these emails have gone missing so he was on a quest to get water and sewer to the properties and the public interest to get water and sewer to the property, um, it's in interest to get sewer into the property so that the - - the current sewage system at the properties can be remediated. And that is what this is about. That is the - - Essentially yo - - This is all in context of why. When this isn't essentially - - This case is not just about you know 10 emails or a handful of emails that he didn't get. Unfortunately there's a lot of context that needs to be explained to the Court so that it understands why Mr. Holder has gone to such great lengths to pursue this and to pursue his rights to get these public

records.

THE COURT: And these are his personal properties?

MR. WEDDLE: These properties - - He manages these properties that are owned by his wife who is, um, Mr. - - who is related to Mr. Levey.

THE COURT: Um-hmm.

MR. WEDDLE: Um, and, um, Mr. Holder has a right to manage the properties, to be on the properties, and quite frankly, um, his rights to be on the property, his ability to manage the property, uh, for the benefit of the - - his wife, uh, the owner has been compromised. And these emails are in the context of that.

THE COURT: And as you understand it, is any of the response, as you understand it, from the entities that have been requested of this information affected by the fact that Mr. Holder is related by marriage to the witness and implying that he, as a public servant, handles certain matters to the benefit of that relative?

MR. WEDDLE: It's my understanding that that's why Mr. Holder asked Mr. Levey to recuse himself and he did.

THE COURT: Then how is it relevant if he wasn't involved?

MR. WEDDLE: Well again, your Honor, these emails, uh, these emails go directly to why the - - go directly - - directly to why the - - why is the town treating him

differently? What is being said about Mr. Holder? Why is he - - why is he being thrust upon with such - - with such obstruction, with such difficulty to get water and sewer to these properties? What has changed? What is being told to him? Um, and these emails go to undercover that. Um, these emails go to uncover that Ms. Morral was sending emails to the town and Mr. Holder is being treated differently by the town. It's not just Mr. Levey. They're infecting the whole town, your Honor, and, um, now we can't get the emails. Now they're deleted. Well I think that's what Mr. Levey will say.

THE COURT: And are you asserting, and do you plan to produce evidence that the, uh, parties may have had or, I guess you would argue perhaps still have, those emails, acting in bad faith in responding to the PIA requests?

MR. WEDDLE: It's not just acting in bad faith to respond, it's - - it's a, frankly it is a - - it is a complete inability to preserve what are public records, your Honor. I think these documents that are sent to the county are public records. They're within the county's email domain. The county has an obligation to preserve those public records. And that fact of the matter is, when we hear testimony like, "Oh we don't control the deletion of public records," and someone can double delete it and it goes away for - - after 30 days - -

THE COURT: Um-hmm.

MR. WEDDLE: - - that - - it - - it's almost unfathomable to me. And especially - -

THE COURT: Pretty common. It is pretty common. I mean my homebase does that and it's a court's public system.

MS. WEDDLE: Well - -

THE COURT: Other companies do that, you know, just whether it's to - - just to avoid these wholesale requests for, give us all emails for the last 18 months, and that kind of thing or whether it's just to keep servers clean, and such, I - - Right now I'm not seeing it. The case is not over, obviously. I have not closed my mind, but will just tell you, you're going to have to tie it together somehow so far. And it seems to me that it's not relevant, all this personal stuff. But I'll give you some more leeway.

MR. KARPINSKI: Your Honor, may I be heard?

THE COURT: Not unlimited leeway. Um, I'll let you be heard.

MR. KARPINSKI: Your Honor, I think, just so it's clear for the record, um, Mr. Levey - - First of all, these two gentlemen to my left are the defendants for the county and what you just heard about was how the Town of Keedysville is not treating Mr. Holder fairly. That has

nothing to do with this case. Nothing at all to do with this case. Mr. Levey is an employee of the sheriff's office in the IT department. Whatever Mr. Holder's concerns are with the Town of Keedysville regarding water service has nothing to do with this MPIA request. And I'm a little concerned because I keep hearing the deletion of "these emails," and count three of the amended complaint references one email of June 2 that was forwarded from the Town of Keedysville to Mr. Levey regarding Ms. Morral, which has nothing to with any water service, uh, and, uh, it certainly has nothing to do with any county business. And I think what's ultimately going to come out in this trial is, is that Mr. Holder already had that email because he requested the email from the Town of Keedysville. So I - - I understand it's a bench trial, your Honor, and I've tried to be very quiet, uh, in terms of the scope of the questioning, but I mean, none of this is focused on really what your Honor needs to decide.

THE COURT: Well it's, uh, two and a half hours into the trial, potentially two days worth of trial, almost that to go. Um, I did allow you to speak, and I think fairly so on your request, but you're making an argument that I believe is in dispute enough that I will, as I said, my ruling will stand, give some leeway, but Mr.

Weddle you got to - - you got to tie it together.

MR. WEDDLE: Okay. Thank you, your Honor.

THE COURT: And let's get to it.

Q. Mr. Levey, uh, you using your - - in your role as the Public Safety Systems Manager, you maintain an email address, correct?

A. Correct.

Q. And that's blevey@washco-md.net, is that correct?

A. Correct.

Q. And you've maintained that same email since 2005 to the present?

A. Correct.

Q. Okay. And is that email, um, is that email address the email account which you primarily use?

A. I have a personal account.

Q. Okay. And what is that?

A. Wander.

Q. Wander?

A. Do you want me to spell it out?

Q. Yes please.

A. W-A-N-D-E-R-E-R 22@verizon.net.

Q. And have you used any other, uh, email accounts from 20 - - 2005 to the present?

A. I have a Gmail account.

Q. Okay.

A. Would you like that one too?
Q. Sure. Yes.
A. I don't have it memorized. It is - -
Q. Do you not have it - -
A. It is a junk account.
Q. Okay so you don't - - You don't use that one for correspondence.
A. You just asked me a question.
Q. I understand.
A. I'm answering it. Do you want it?
Q. Do you - - Do you use the Gmail account to correspond with people?
A. No.
Q. Okay. Fair enough. Do you use any other accounts to correspond with individuals?
A. No.
Q. Okay. So just the - - the county issued account and your wanderer22@verizon.net. Those are the accounts that you use.
A. Correct.
Q. Okay. Mr. Levey, I'm going to ask you about your county email address. Um, is it your practice to, uh, delete emails, uh, in your - - that are sent to or received by your county email address?
A. Yes.

Q. Describe that please.
A. Describe what?
Q. Your practice of deleting - -
A. My practice is when I reach 20,000 emails, I take the oldest emails and I delete them.
Q. When you reach 20,000.
A. Yeah.
Q. And how often is that?
A. Um, I can reach 20,000 in six months.
Q. Okay. 20,000 emails in your inbox, is that correct?
A. Yes.
Q. Do you delete your sent box?
A. I do.
Q. When do you do that?
A. When I'm deleting my inbox. When I'm deleting contents of older emails, I remove the sents and the deletes.
Q. Okay.
A. Because it all encompasses into one mailbox.
Q. Okay. And how often do you do that?
A. About every six months.
Q. And do you place them, uh, those go into your delete box, correct?
A. Correct.

Q. Okay. And, um, is that where they reside and remain?

A. No, they get deleted.

Q. What do you mean "they" get deleted?

A. Everything goes into your delete box, whether it's from a sent file, an inbox, drafts. If they're old enough, they go away. So I delete the deletes.

Q. Would you agree with me that if its in your inbox or your sent box, you have to delete that for it to go into your trash box, correct?

A. Yeah.

Q. So in other words, there's not an automated system where emails, uh, get moved from your inbox into your delete box, correct?

A. There should be, but there doesn't seem to be.

Q. So you have to manually do that? Yes?

A. Yes.

Q. Okay. And it's your testimony that you delete the delete box as well?

A. Absolutely.

Q. Mr. Levey, do you have a stack of exhibits in front of you? Do you have a stack of papers up there?

MR. KARPINSKI: They were given to madam clerk.

MR. WEDDLE: Thank you. Mr. Levey, I'm going to ask you to look at, uh, Plaintiff's exhibit two please. Sir,

if I could direct your attention to Plaintiff's exhibit two, the - - the top page.

A. Got it.

Q. Have you read that document?

A. (Pause for approximately 15 seconds.) Okay.

Q. Plaintiff's exhibit two discusses a request for, uh, the contents of your email address, blevey, uh, the county email address, and it states that at that time there were 45,239 emails in your - - in your box. Or I'm sorry, in your email account. Do you see that?

A. Yes.

Q. Were you involved in this request at all?

A. No. Was I involved in the - - the request for - -

Q. Yes.

A. No.

Q. Okay. Um, you testified earlier that - - however that there's only 20,000 emails in your - - in your, um, box at one time, correct?

A. I keep a floating 30 - - 20,000, correct.

Q. A floating 20,000?

A. Yeah, when my box gets to 20,000, it gets a little too unmanageable to even sift through it.

Q. Okay, but at this time there were 45,239, correct?

A. Yeah.
Q. Do you have any reason to believe that that wasn't accurate?
A. How would I know? I have no idea.
Q. Okay. Your practice is to delete emails, not to archive them, is that correct?
A. Correct.
Q. Mr. Levey, do you know a person named Christine Morral?
A. I'm familiar with the name.
Q. How so?
A. Uh, she lives in the subdivision behind me.
Q. What subdivision is that?
A. That would be Stonecrest.
Q. Have you met her before?
A. Once or twice.
Q. And when was that? When was the first time you met?
A. I don't know, three years ago, maybe. Two and a half years ago.
Q. Do you recall receiving any emails pertaining to her?
A. Not offhand, no. I assume you're going to show me one?
Q. Perhaps.

A. Okay.

Q. Um - -

THE COURT: The Court will grant your request to treat the witness as a hostile witness, and I'll note on the record that the tone of voice and the nature of the responses justify that amended ruling.

Q. Thank you, your Honor. Mr. Levey, in your, uh, in your role as either, I believe it was Vice-Mayor of the Town of Keedysville, is that correct?

A. Yes.

Q. And your role, uh, on the - - the towns, uh, water commission, um, in those - - in those capacities, um, would it - - would it be a - - would it be a common occurrence for, uh, you to be forwarded emails pertaining to town business?

A. Yes.

Q. Okay. Are you familiar with the email address townhall@keedysvillemd.com?

A. I am.

Q. Okay and what is - - what is that email address?

A. It's the townhall email address.

Q. Yes. That's a - - Who operates that address, if anyone?

A. That would be our administrator.

Q. And who is that?

A. Today, I don't know. Before it was Rick Bishop.

Q. Okay. Okay and, uh, was it Mr. Bishop's practice to forward to you emails regarding town business?

MR. KARPINSKI: Objection as to form.

THE COURT: What's the problem with the form?

MR. KARPINSKI: How would this witness know what Mr. Bishop's practice was.

THE COURT: Okay. Well I have said, he's a hostile witness at this point, in it's essence cross-examination, he can answer the question as best he's able, and you certainly will have a chance, Mr. Karpinski, to come back on and, in essence, cross. Overruled.

Q. Do you recall the question, sir?

A. No, could you repeat the question?

Q. Was it Mr. Bishop's practice, um, to forward to you or send you emails, uh, related to town business from a townhall@keedysvillemd.com email address?

A. Yes.

Q. Okay. And was it his practice to send those to your, uh, county, um, email address?

A. Yes.

Q. Thank you. Do you recall receiving any, uh, emails, um, to your county address from Mr. Bishop related to Christine Morral?

A. Not offhand, no.

(Petitioner's Exhibit 5 was marked for identification.)

THE COURT: Thanks.

Q. Mr. Levey, I'm handing you what's been marked for, um, it's marked as Plaintiff's exhibit five. The first page is a certification of records from the Town of Keedysville. Um, the second page lists a Public Information Act request. And the third page is an email from Christine Morral, morral7@msn.com. to townhall@keedysvillemd.com. And there are two attachments. There are some attachments listed there. And then the fourth page is an email from townhall@keedysvillemd.com, dated Monday, June 1st, 2020 at 8:12 p.m. to "Levey, Barry; Barry Levey; Gina Ellis, Judy Kerns; mayorkenlord@gmail.com; and Matt Hull. Do you see that, sir?

A. That would be the last page of the exhibit?

Q. Yes sir, page four.

A. I do.

Q. Okay. This email, uh, on the last page, turning to your - - the last page, that email address went - - that email went to your county email address at blevey@washco-md.com, correct?

A. Yes.

Q. And that email, um, contained - - You see the

attachment line on that email?

A. I do.

Q. And it says, uh, video - - one of the attachments says "video.mov." Do you see that? I think it's the third attachment.

A. I do.

Q. And the - - the fifth attachment, it says, "video_1.mov." Do you see that?

A. I do.

Q. Uh, this - - this email contained two attachments, did it not? Those two video attachments?

A. It certainly looks like it.

Q. Okay. And did you - - Do you know whether or not you deleted this email from your, um, county email address?

A. I don't have any email like this. Yes, it must have gotten deleted in wide sweeping deletions that I have to do for housekeeping.

Q. You say you have to do them for housekeeping. Who mandates you do that?

A. The size of the box mandates what I do or don't do with my mail.

Q. There's no - - There's no email size limitation on the county's email accounts, correct?

A. I have no idea.

Q. Okay. So you don't know, sir, whether or not you have to delete emails, correct?

A. Correct.

Q. The county has never trained you or instructed you to delete emails, have they?

A. Not that I'm aware of. It's a matter of housekeeping.

Q. And that housekeeping is solely within your discretion, is it not?

A. It's based on the number of emails in the inbox and how much space they're taking up as far as I'm concerned because it becomes impossible to search them. When you have that many emails, you come back with search responses that are yards long. So if I search three letters or 10 letters or a date or something, I get so many responses I can't even weed through them.

Q. Yeah, but the search - - If you do that, the searches are listed chronologically, aren't they?

A. Correct.

Q. Right. So if you know of a time period when you're searching for an email, you can just ignore the - - the old one, the old search results, can't you?

A. I guess, yes.

Q. Do you have any specific recollection of deleting this email?

A. I do not.

Q. So it may exist - - It may exist in your - - in your, uh, county email address, correct?

A. Not that old.

Q. Why do you say that?

A. Again, it's a window of time. Older than 18 months, I'm looking to delete everything. Just not needed. If - - If I haven't had an actionable thing in my county email that it's older than 18 months, I don't need it.

Q. Have you had any training from the county on what records - - what emails you may delete versus what emails you can't delete?

A. No.

Q. So is it your testimony, sir, that if emails relate to county matters, county business, you routinely delete those?

A. Yes. (Pause for approximately 20 seconds.)

COURT REPORTER: Judge Jordan, I'm sorry to interrupt - -

THE COURT: Sure.

COURT REPORTER: But while we're in lull, Judge Michael, just moved the timeline to when his jury is to come back after lunch.

THE COURT: Okay.

COURT REPORTER: He can come down right now and start or what is your preference?

THE COURT: Yeah, let me just check. How long do you think?

MR. WEDDLE: My preference is Monday as we - - as we've agreed.

THE COURT: Well no, I'm sorry.

MR. WEDDLE: I'm not prepared.

THE COURT: I'm not going to have - -

MR. WEDDLE: I'm sorry.

THE COURT: I'm not going to have - - I'm not going to have a judge on this court be dictated to by counsel, with all due respect. I'm going to accommodate his schedule. If we can accommodate his schedule while providing a regular time for lunch for staff, that would be great. Um, how long do you think he'll be? Any estimate? I mean I realize that may be difficult. And if you can't, you can't.

MR. WEDDLE: Well, uh, I don't know. Truth be told, it's Mr. - - I believe it's going to be Mr. Karpinski's witness because the county has the burden in this case.

THE COURT: Fair enough. Any sense, Mr. Karpinski?

MR. KARPINKSI: 20 minutes, maybe.

MR. WEDDLE: My cross is certainly going to take longer than that because I suspect I'm going to be

entering in a number, and walking the Court through a number of documents that Mr. Karpinski may or may not. I'm not quite sure what he's going to get into, but - -

THE COURT: Okay, if we can pass the word to Judge Michael that, um, we'll work around his schedule. Would like to give staff an hour lunch at 12, but we'll put him in that timeframe if he would like. And counsel that intends to call him has also said that he would be, um, able - - or he hoped to be able to call him on Monday and if that's okay with him we can work around his Monday schedule. So it's really his call with the jury. Certainly, other than trying to be available for staff for lunch between 12 and one, as much as we're able to do that, it's totally his call. If he wants something more definite, we'll just bite the bullet here and tell him, uh, 1 o'clock today or Monday morning, whatever his preference. And add to that, if he'd like to talk with me, I'll get off the bench and chat.

MR. WEDDLE: Your Honor, I'm - Kevin, did you want to say something?

MR. KARPINSKI: Well you know, what Judge Michael is going to testify that I think is relevant in this case or in his - - in - - in exhibits. So I - - I mean, I can get him in and - - I can get him on and off the stand in 10 or 15 minutes.

MR. WEDDLE: Your Honor, I stood up because I don't -- I apologize, I don't want to dictate Judge Michael's schedule. Um, I was - - I was merely trying to convey that we all yesterday in a conversation, including, um, I believe the attorneys in the case, and it was - - and we told them that we would call him on Monday. That was the understanding.

THE COURT: Did you talk to Judge Michael about that?

MR. WEDDLE: Yeah, I mean, he - - I think he was there.

COURT REPORTER: Judge Michael says 1:00 p.m. today. I believe if his cases finishes he will be out of town Monday.

THE COURT: If you want him, you're going to get him at one.

COURT REPORTER: 1:00 p.m.

THE COURT: Okay.

Q. Uh, Mr. Levey, um, let me just collect my thoughts and get back to where we were. Mr. Levey, has anybody ever, uh, from the county, told you to preserve or hold the contents of your email inbox, I'm sorry, you email account, excuse me?

A. No.

Q. And you don't have a practice of archiving or saving the contents of your email inbox?

A. I do not.

Q. Anywhere. Okay. Mr. Levey, if I may direct your attention to Plaintiff's exhibit three. If I may help the witness find the document? And sir, this is a December 23, 2020 preservation letter. Uh, have you ever seen this letter prior to today?

A. No.

Q. And in response to this letter, no one has told you to preserve or protect the - - the emails in your account, correct?

A. No.

Q. Okay. Thank you, Mr. Levey.

END DIRECT EXAMINATION

THE COURT: What do you expect on cross?

MR. KARPINSKI: What's that?

THE COURT: What do you expect timewise on cross, counsel?

MR. KARPINSKI: 10 minutes at most.

THE COURT: Okay.

MR. KARPINSKI: What time - - What times does your Honor - -

THE COURT: Well it's five of 12, let's - - if we're over at 12:05 or so, we're good.

MR. KARPINKSI: Okay, I'll - - I'll be very quick.

THE COURT: I'm not saying to cut yourself short and

(unintelligible) yourself and your client.

CROSS-EXAMINATION

BY MR. KARPINSKI:

Q. So, uh, Mr. Levey, you're employed by the sheriff's office, correct?

A. Correct.

Q. Uh, you answer to the Sheriff of Washington County, is that correct?

A. That is correct.

Q. And as I understand what you've testified to, you also were a Town of Keedysville elected official at one point, is that correct?

A. Correct.

Q. And you served in that capacity for what period of time?

A. Almost 20, 22 years.

Q. Okay. And I don't really want to get into the particulars, but it sounds like your relationship with Mr. Holder has deteriorated over the last couple years.

A. I would agree.

Q. Okay. And is that in part due to, uh, Mr. Holder's, uh, conduct as it relates to his request with the Town of Keedysville?

MR. WEDDLE: Objection.

Q. In other words, has he filed re - -

THE COURT: Overruled.

Q. - - repeated MIA - - MPIA requests with the town?

A. I would - - I would say.

Q. Okay. Do you have any idea how many he has filed?

A. I do not. Probably in excess of 20. Maybe 30.

Q. Okay. Would you look at exhibit, uh, five? And the first page has PIA request 35? Do you see that response?

A. I see it.

Q. Okay. And it looks like the second page of this PIA request was as of October 16, 2020, is that correct?

A. Yes.

Q. Okay. And the third page is got you copied - - I mean the fourth page has you copied, along with, uh, Gina Ellis, Judy Kerns, Mayor Ken Lord, Matt Hull. Do you see all those people?

A. I see it.

Q. Okay. And who are those other individuals?

A. Those were council people at the time. Gina was a council person, Judy still is. Matt Hull.

Q. Okay. Would it be fair to say that this email, um, related to your duties and responsibilities as an elected official for the Town of Keedysville?

A. To have this information shared to me?

Q. Yes.
A. Yes.
Q. Okay. It had nothing to do with your role as an employee with the sheriff's office, is that fair to say?
A. No.
Q. That was a poor question. Did it have anything to do with your role as - - as an employee of the sheriff's office?
A. No.
Q. Would you sometimes get emails sent to your sheriff - - sheriff's off - - sheriff's office account that involved matters involving the town?
A. Correct.
Q. And why did you, uh, resign as an elected official for the town?
A. My son-in-law, Justin, made it untenable for me to be a council person any longer.
Q. How so?
A. Uh - -
MR. WEDDLE: Objection, your Honor.
THE COURT: Overruled.
A. He threatened litigation against me - -
THE COURT: I would just say that that issue was, uh, that door was opened by the, uh, prior examination. Overruled. You can answer the question.

A. He threatened my wife and myself with, uh, being sued, personally and professionally.

Q. Anything else?

A. No, that was enough for me.

Q. Okay. That's all I have, thank you for your time, Mr. Levey.

END CROSS-EXAMINATION

THE COURT: Mr. Weddle.

MR. WEDDLE: Very briefly.

THE COURT: Yeah, sure.

REDIRECT EXAMINATION

BY MR. WEDDLE:

Q. Um, Mr. Levey, um, the - - turning your attention back to, uh, exhibit - - exhibit five, um, which is the certification of records from the Town of Keedysville. Turning to the last page, this email was sent to you - - sent to your, uh, Washington County email address, correct?

A. I - - It does look like that.

Q. Okay.

A. I - - I really can't tell.

Q. Well you testified earlier that it was, correct?

A. Well I'm named here twice, so maybe one is going to county and the other might be going to wanderer. I don't know.

Q. Okay, so if it's - - one is going to county and one is going to wanderer, you were - - you were emailed this - - this document, correct?

A. Yes.

Q. Okay. And, um, this - - this document says that it's "PIA 35," correct? And I believe you testified that this was a - - the 35th request to the Town of Keedysville, is that what you testified to?

A. Okay. If that's what it says, yes. I have no idea the number of PIA's. I gave up counting.

Q. Um, if Mr. Holder filed 35 PIA requests, he - - those should be answered, each and every last one of them, correct?

A. Sure. I would imagine, yes.

Q. So if Mr. Holder filed 35 PIA requests or 50 PIA requests, would you treat him any differently in that regard?

A. No I - - I wasn't handling the PIS (sic) request mechanism.

MR. WEDDLE: Your Honor, as a matter of housekeeping, I'd like to move for, uh, Plaintiff's exhibit five to be admitted.

THE COURT: Okay.

MR. KARPINSKI: No objection.

THE COURT: Plaintiff's five is admitted into

evidence.

(Petitioner's Exhibit 5 was admitted in evidence.)

MR. WEDDLE: Thank you.

THE COURT: That's all?

MR. WEDDLE: Thank you, Mr. Levey, appreciate it.

END REDIRECT EXAMINATION

THE COURT: Okay. We'll recess till 1:00 o'clock. I'm sorry, can Mr. Levey be excused?

MR. WEDDLE: Yes. Yes, your Honor.

THE COURT: Thanks Mr. Levey.

END TESTIMONY OF BARRY LEVEY

(Whereupon at 12:04 p.m. court was in recess. At 1:04 p.m. court reconvened and the following ensued:)

THE COURT: Good afternoon. Please have a seat. Judge Michael is available at this point.

MR. KARPINSKI: Yes your Honor.

THE COURT: And, uh, - -

MR. KARPINSKI: We would call Judge Michael.

THE COURT: Do you still wish to call him?

MR. KARPINSKI: Yes.

THE COURT: Thanks, Judge. Hope - - I'm glad we were able to work it out a little bit.

JUDGE MICHAEL: Thank you. Thank you for accommodating me, Judge.

THE COURT: Sure.

TESTIMONY OF JOSEPH MICHAEL

JOSEPH MICHAEL, having been duly sworn, did testify as follows:

THE COURT: Okay, Mr. Karpinski.

DIRECT EXAMINATION

BY MR. KARKINSKI:

Q. Would you please state your full name, sir?

A. Joseph Scott Michael.

Q. Thank you for, uh, taking the time to be with us today, your Honor. Um, how long have you been on the Circuit Court for Washington County?

A. I was appointed in February of 2022, sworn in, in March of 2022.

Q. Okay And what did you do prior to becoming a member of the judiciary for the circuit court?

A. I was the - - immediately before I was a Deputy State's Attorney for Washington County, started that in 2004, before that was an Assistant State's Attorney going back to 1993.

Q. Okay. How many years is - - I can't - - I can't do math.

A. 29.

Q. How many years? 29 years?

A. 29 years as a prosecutor.

Q. Okay.
A. 28 or 29. 29. 29.
Q. And, uh - -
A. Yeah, 29.
Q. Judge Michael, do you know Justin Holder?
A. Yeah. Yes I do.
Q. And how do you know Justin Holder?
A. Uh, I know Mr. Holder, uh, through litigation really. But you know, I've seen - - I've seen him at, you know, I always greet him when I see him socially as well. But, uh, generally just know him through, uh, litigation in, uh, - - in - - certainly in the - - in the, uh, district court usually.
Q. Okay. Uh, this was litigation when you were at - - the, either the deputy state's attorney or the assistant state's attorney?
A. I was always - - I was deputy at that point. I tell you the first time I can remember hearing his name was in some kind of peace order, an ex parte peace order that I wasn't involved in. I just happened to be in the district court and - - and he was swearing out a - - a peace order, uh, against an acquaintance of mine named - - named Ben Estes. So that - - that's when it first came to mind. And really didn't register who he was then, but it came - - it all came full circle then eventually.

Q. Okay. And that was a peace order that was being field against Mr. Estes?

A. I think that's what it was.

Q. Okay.

A. I know it was Judge Thomas and I - - I just commented, I said, "Well hopefully they work it out." But I - -

Q. Okay. Did there come a time where you began corresponding with Andrew Bright regarding, uh, MPIA requests that Mr. Holder was filing?

A. I do recall that, yeah.

Q. Okay. And we're going to move this right along, your Honor. I put - - I put right in front of you Plaintiff's exhibit one.

A. Um-hmm.

Q. Um, if you can take a look at that.

A. Okay.

Q. Okay. And, uh, I'm just sort a gonna to try and walk through this, but the last page is the request from Mr. Holder and then it looks like Mr. Bright reached out to you regarding whether these records were, uh, investigatory records under the, uh, General Provisions Article 4-351. Do you see that in the middle of the second page?

A. Yeah. Yep.

Q. Okay. And, uh, it looks like you responded, uh, that same day less than about - - about 30 minutes later, quote, "Ongoing investigation and pending charges."

A. That's correct.

Q. Do you see that?

A. Yep.

Q. Do you have a recollection of what the ongoing, uh, investigation was and the pending charges?

A. The - - My recollection and - - and there was the - - A couple things that come to light at the same time. Um, when I say the same time, within six, eight weeks of each other, sum - - that summer. I think it was that summer. Was that during Covid? 2020.

Q. 2020, yes.

A. Yeah. So - - So, uh, Natural Resources police officer came to - - met with me at my home. I was on duty. He was on duty, but I was working from home. He came there. And described, uh, what is considered, I think the term is "encroachment." It's when, uh, a private individual trespasses or overuses a state piece of property. And it had to do with - - with a, uh, some ground down in Keedysville that I - - I would know it if I - - You know, I know generally where it is and, uh, that they were - - that Mr. Holder was accused of uprooting some trees and - - or using a piece of

equipment in there. Three charges. I can't remember. They were citations. Citations.

The other thing that was going on is that Mr. Estes had - - had called me and says, "Hey, I'm having trouble with my neighbor." And I referred him, you know, about him private trespass on the other side of the property. Private trespass and - - and I don't know whether harassment or even assault. I didn't even know what it was, but I said, "Ben, because you're friends of mine, just, you know, you want to have somebody else handle it. I - - You know, I'm going to stay out of that."

And then the third case that was also under investigation was Mr. Holder had filed a - - a, uh, a - - a private application for statement of charges against a lady whose name I can't remember in a - -

Q. Is it Ms. Morral?

A. Yeah, Ms. Morral. And - - And, uh, she was represented by, um, Ms. Teahan, and that came up for a, uh, for a preliminary hearing. And ultimately the - - the - - The only thing I really remember specifically, he charged her, and the commissioner gave him a charge for wiretapping, uh, for recording him in public. And I looked at it and - - and the, uh, the person had no record and I referred that to diversion. And after she did her community service, nol prossed it. But

technically that - - jurisdiction still exists on that particular case. So even to today, in my opinion, that would still be an open investigation as it's never been concluded and - - and, uh, you know, was over a citizen, Mr. Holder's objection. So I mean that was - - That has never closed.

Q. Okay.

A. And I don't know happ - - I don't know what happened to the other cases, but I know that one is - - Because I - - I nol - - I nol prossed that one in exchange for a - - a number of hours of community service which far exceeded whatever sentence she would have gotten and it seemed fair to me, but - -

Q. Yeah.

A. - - but you know she probably would have some arguments, but technically it's still open.

Q. Okay. And it seems - - It appears from Mr. Bright's, uh, email of August 4, that he sent you the - - basically the - - the emails that were responsive Mr. Holder's request that involved Christine and Scott Morral and any sheriff, deputy, county official?

A. He could have. You know, it says that he did, yeah.

Q. Yeah, okay.

A. Uh, but - - But the other thing - - The other

thing that was really interesting that I - - that - - that the - - the - - the - - the traffic that - - that was generated, that I was thinking of, wasn't so much that, it was the traffic that I had with the Department of Natural Resources' counsel.

Q. Um-hmm.

A. That I think was ongoing at the same time. That may have been later, but I - - I - - That was the mos - - the correspondence that I generated. There were some with Ms. Morral, because Ms. Morral contacted me. I said - - I think I said, "Lady, you know, you are charged. You need to - - You need to get counsel." But I - - I don't really remember. But what I really - - The most extensive correspondence I remember having was with counsel for the Department of Natural Resources.

Q. Okay.

A. In Annapolis or Annapolis, yeah.

Q. And would it be fair to say that you were aware of ongoing disputes between Mr. Holder and his neighbors?

A. Between his neighbors? Several neighbors on - - on both sides, and with the neighbor being the state.

Q. Being the Department of Natural Resources?

A. The Department of Natural Resources, yeah.

Q. And all that was going on at that time in - - I August of 2020?

A. Yeah and they all - - There were criminal - - criminal allegations flying about in multiple directions.

Q. And so your response to Mr. Bright was basically that there was, uh, ongoing investigations and criminal charges, correct?

A. Yeah. And I think the crim - - definitely the criminal charges were open, uh, the citations were open for a long, long time until way after we started opening from Covid, you know, State against Holder at least. I don't know, I mean, State against Morral, I don't know when that concluded. We - - And I seem to remember that we expunged the records on - - because she co - - we nol prossed it, so we had to expunge our records on State against Morral.

(Respondents' Exhibit 1 had been pre-marked for identification.)

Q. Okay. Can you turn to the next document, your Honor? That's Defendants' Exhibit one.

A. Okay. It's noted as Respondents' exhibit one? Okay?

Q. Oh, Respondents' exhibit.

THE COURT: Is that right?

Q. That will be one for us.

A. Okay?

MR. KARPINSKI? Oh that sticker was put over it. So

it's Respondents' - - It's going to be Defendants' exhibit one. We'll fix that. We'll clean that up once we're done.

THE COURT: Is that - - Holder's exhibit? What exhibit are you talking about?

MR. KARPINSKI: It actually is Defendants' exhibit one. Would you like me to remark them, your Honor?

THE COURT: No, I was just if you had an extra copy for the bench would be helpful. If you're going to refer to it. If you - - If you don't, that's - -

A. What am I - - What am I looking at?

THE COURT: - - all right. Not a big deal.

MR. KARPINSKI: Well your Honor, if wouldn't mind informally looking at these, I'll go ahead and - -

THE COURT: Let's just forget about it. If you don't have one handy, that's all right. If it become necessary for me to look, either from my point of view or yours, then we can take a look at it.

MR. WEDDLE: Mr. Karpinski, I'm a little confused. I have what's been marked as Defendants' four, Defendants' eight, Defendants' nine, 10.

MR. KARPINSKI: Those were pre-marked.

MR. WEDDLE: Okay. Okay, so you're starting with one.

MR. KARPINSKI: Yeah.

A. All right so I'm looking at - - I don't know if I'm looking at the right documents or not.

Q. If you just give me one second, your Honor.

A. Okay. (Pause for approximately 35 seconds.)

MR. KARPINSKI: Your Honor, may I approach?

THE COURT: Yes. Yes you may.

MR. KARPINSKI I apologize. I've got an extra set - -

THE COURT: Okay.

MR. KARPINSKI: That will allow the Court to follow along.

THE COURT: All right, thanks.

Q. So if we look - - take a look at what has been marked as Respondents' exhibit 1.

A. Okay, I got it.

Q. Do you see that, your Honor?

A. Um-hmm.

THE COURT: I see Respondents' exhibit one as it's being stapled. Thank you.

Q. And - -

A. October 14th - -

Q. So - -

A. - - is my correspondence.

Q. Correct.

A. October 14, 2020, gotcha.

Q. And do you see in the middle of the page where Mr. Bright asked whether Mr. Holder's renewed his request for correspondence regarding Christine Morral and the sheriffs?

A. Right.

Q. Okay. And that was directed to you in your capacity as a Deputy State's Attorney?

A. And your response was that "Mr. Holder is under criminal investigation and pending criminal prosecution for activities related to those communications."

Q. Right.

A. Okay and that was your opinion as of October 14 of 2020.

Q. Right, he had three - - The - - As I remember the three citations were still open, but more importantly, his - - either up or we were fielding calls in the office. I mean the one that I had personally gotten on my personal phone from Ben Estes that I referred to another lawyer.

MR. WEDDLE: Your Honor, I'm going to object to this. It's hearsay. His personal - -

THE COURT: Well he just said something that he personally got.

MR. WEDDLE: When Ben Estes - - What he's stating Ben Estes told him.

A. No I'm not going to - - You know, Ben Estes had called me and, you know - -

MR. WEDDLE: Same objection.

THE COURT: Was he - - Was he talking about somebody else's statement?

A. Uh-uh, No - - He was - - He was calling, you know, making a criminal complaint against Mr. Holder and I referred him to the office.

MR. WEDDLE: Same objection.

A. So - -

THE COURT: I - - I don't get the - - I don't get the hearsay.

MR. WEDDLE: It's an out-of-court statement by Mr. Estes to Mr. Holder, uh, to Judge Michael.

THE COURT: Okay. Who was present to talk about it and open for cross-examination? The objection is overruled.

A. Well it had to do with the pendency of the - - Thank you, your Honor. The pendency of investigations. You know there was this dispute on the, you know, Holder against Estes, that I think brewed into criminal - - criminal charges. I really didn't - - didn't pay a lot of attention to it. I just know that they existed and I referred them to Mr. Shapiro, who was, you know, my most senior, uh, Assistant State's attorney in the District

Court Division. And Ms. Morral and her counsel, Ms. Teahan, were, you know, sabre-rattling about a variety of complaints, you know, about Mr. Holder. They hadn't filed anything, but they were upset with the - - with his behavior and were worried that he was going to tear down a fence or invade the property. So that, in my, you know, that's an open - - open claim in our office and that was - - that we had been asked investigation. Now was it an upfront burner in a middle of Covid? No. But yeah, it was, in my terms, under investigation.

Q. But it was still - - still out there.

A. Still out there. Still out there.

(Respondents' Exhibit 2 had been pre-marked for identification.)

Q. Okay. So let me show you Respondents' exhibit two.

A. Okay.

Q. And - - Um, this looks like it's an email chain that, um, Mr. Holder - - that Mr. Bright responded to Mr. Holder and then you responded to Mr. Bright, correct?

A. Yeah. Yep.

Q. And it looks like, uh, from exhibit two that, um, Mr. Holder was at that time represented by Mr. Harbin, is that correct?

A. Yes. Yes.

Q. And who - - who is Mr. Harbin?

A. Mr. Harbin is a local criminal attorney.

Q. Okay. And was Mr. - - So was Mr. Holder still under investigation or under criminal charges at that time?

A. He was under - - He was under criminal charges at that time and I think it had expanded past the, um, the Natural Resources charges that I had consulted with, uh, with the Natural Resources officer about to whatever else was going on that Mr. Shapiro was handling. Mr. Shapiro answered to me. I knew it was ongoing, yeah.

(Respondents' Exhibit 3 had been pre-marked for identification.)

Q. Okay. And then let's look at Res - - Respondents' exhibit three or Defendants' exhibit three.

A. Okay.

Q. And this looks like a - - an email exchange between Mr. Parkins and my office and - - and your Honor. And I want to draw your attention to the bottom of - - July - - July 20, 2021 at 3:34.

MR. WEDDLE: Your Honor, I'm going to object to this document. Uh, we served request for the production of documents in this case. We served interrogatories in this case. Uh, the defendants never responded to the request for the production of documents. In their

answers to interrogatories they did not list this document. We have not been given this document prior to today.

THE COURT: Okay.

MR. WEDDLE: I think it's wholly unfair to - - to raise this now.

THE COURT: Well I think so far there hasn't been a substantive question and it's not been moved into evidence. Uh, when and if there is a substantive question, we can go back to your objection.

A. What's - - What's the question, counselor?

Q. Just - - Just directing your attention to the bottom where it says, "The State concluded the charges against Mr. Holder last week. I would continue to characterize the case as under investigation."

A. Okay, yeah.

Q. Do you see that?

A. Yes.

Q. And that was your - - That was your response - -

A. Yes.

Q. - - at the time?

MR. WEDDLE: Same objection.

THE COURT: Okay. What do you have to say to that?

MR. KARPINSKI: Well this is ac - - This is an email after the litigation begun. It was really not a

discovery document. This is between my office and Mr. Michael - - and Judge Michael.

MR. WEDDLE: Your Honor - -

MR. KARPINKSI: I don't - - I don't know that - -

THE COURT: Is this trial prep? I mean - -

MR. KARPINSKI: What's that?

THE COURT: It's trial prep or what? I mean if counsel hasn't seen it and it causes prejudice, then at least so far, his objection seems to have merit.

MR. WEDDLE: And your Honor, to further point you to this point, in answer to - - in ques - - I'm sorry, interrogatory number three, standard interrog - - interrogatory number three, we asked for any documents, electronically stored information, tangible documents, tangible things to support a position you've taken or intend to take in this action," et cetera, et cetera. And they say that "The defendants intend to rely on records produced to plaintiff on August 31st, 2021," and I'll represent to your Honor that those were the sort of 16 emails characterized earlier, uh, which is a compilation of emails produced by Washington County in response to a PI re - - PIA request made by plaintiff. Those records are electronically stored and held by Washington County. "Defendants may also rely on documents produced through discovery," there were none,

and "Defendants agree to supplement their answer to this interrogatory in the event supplementation becomes necessary." There was no supplementation.

THE COURT: Okay and tell me the prejudice you claim by the non-disclosure.

MR. WEDDLE: Well, your Honor, I've never seen this document before he handed it to me 30 seconds ago.

THE COURT: Yeah, but it's got to be prejudicial also, and you may well have been prejudiced, your client, um, I just need to know what it is. If it's no harm, no foul, then - -

MR. WEDDLE: Can - - Can I read it, your Honor, before I respond to your question?

THE COURT: Um, yeah, that's okay. (Pause for approximately 30 seconds.)

MR. WEDDLE Well - - If I may read the entire thing before I comment? (Pause for additional 10 seconds.) Your Honor, there's apparently on page one going into page two, there's an email from Mr. Michael to Mr. Parkins who I believe is a former colleague of Mr. Karpinski and Mr. Karpinski regarding Judge Michael's affidavit. And apparently Judge Michael is commenting about the conclusion or the status of the charges at that time and his characterization of this case as "under investigation," and then makes a comment about being

"recharged if he re-instigates with is neighbors." Again, none of this line has been produced, uh, before. I mean he can't just bring it in and surprise folks with emails. They've had - - They've had - -

THE COURT: Mr. Kar - - Mr. Karpinski, what do you have to say to that?

MR. KARPINSKI: Well your Honor, this ultimately - - there is no prejudice. It ultimately culminated in the affidavit Judge Michael signed basically saying he felt the matter remained under investigation.

THE COURT: Are you saying the affidavit was identical to the contents of the email that is objected to?

MR. KARPINSKI: Uh, it's not identical, but it's very similar.

THE COURT: Well let's try this, substantively identical - -

MR. KARPINSKI: Substantively identical.

THE COURT: - - or substantively similar?

MR. KARPINSKI: Sub - - Well substa - - substantively, uh, similar in the sense that basically it was Judge Michael's affidavit that the matter - - he remained under criminal investigation, uh, and there were criminal charges.

MR. WEDDLE: To that, your hon - - your Honor, the

affidavit that Judge Michael ultimately signed says nothing about re-charging. He says noth - - He's never been told about re-charging. This is the first I'm hearing about re-charging if there's some sort of re-instigation with his neighbors.

THE COURT: Isn't this information, though, that you had, you know, and knew that you'd be facing at trial, that there was this issue about an open investigation?

MR. WEDDLE: This is after trial. The trial - - What trial do you mean?

THE COURT: This one.

MR. WEDDLE: No, I had no idea about this re-instigation of - - of re-charging and re-instigation.

THE COURT: Did you know that the investigation was ongoing?

MR. WEDDLE: No.

THE COURT: That that was the defense for not producing?

MR. WEDDLE: What could be ongoing? What could be ongoing is our - -

THE COURT: I'm asking the questions.

MR. WEDDLE: No. No your Honor. Candidly no. There's - - There's been no - - To my knowledge, all the charges have been resolved and there's no re - - re-charging, you know, regardless of re-instigation. How -

- How long can someone be open to an investigation?

THE COURT: Well I get to ask the questions too. Okay? The point is, is this new to you that the claim from the respondent was that there was an ongoing investigation and that was a reason for not producing the documents at issue right now?

MR. WEDDLE: As of - - As - - We've never received this. As of this date, I don't believe, which was after the criminal charges were resolved. The criminal charges were resolved on July 15th, 2021. This email was dated July 20, 2021.

THE COURT: The question is whether it's news to you that the - - the defense, if you will, or the explanation for not producing, I mean for not, yeah, for not producing the requested documents, under the PIA, was that this was an ongoing investigation? Whether - - Whether they went too long or whether it was correct or not is another story, but I'm just asking, is that - - is that news to you? I'm really going to the issue of prejudice in this trial. And if it's not news to you, then it's seemingly not prejudicial.

MR. WEDDLE: Candidly, yes. It's our position that it is news to us because, again, the criminal cases were resolved. Um, this was literally the day before the summary judgment hearing. Um, there was no information

or reason to believe that there were - - they were still under investigation. He had resolved the criminal charges. So - -

THE COURT: So you weren't told the reason they were not disclosed by - - verbally or by some other document, was that there was an ongoing investigation?

MR. WEDDLE: We were - - We were told that in October of 2020, when he made a request for the documents and, uh, it was stated that it would - - there was an ongoing investigation and then we asked for *Brady* materials in the - - in the winter of 2021. And they weren't - - they weren't provided. So yes I - - This is absolutely news to me that - - that the county would take the position that there's an ongoing investigation on the state when the criminal charges had been resolved five days prior.

THE COURT: So you're saying coming into this trial, that you did not know that the response to - - or the reason for the lack of response to the P - - to the request for documents was that this was still under investigation?

MR. WEDDLE: Your Honor, I think you need to - - I think we need to be careful about the time - -

THE COURT: Let's get is - - Let's get it precise - -

MR. WEDDLE: - - the timelines.

THE COURT: - - quick answer.

MR. WEDDLE: As of this date, no I did not know. As of October 14th 2020, when they responded with a denial and said we are withholding them because there was an ongoing investigation, yes. At that time, we knew. In January - - On January 20th, 2021, we had a third request for the documents and they were not forthcoming. At that time we knew. On this date, July 20th, 2021, I did not know.

THE COURT: I'm confused on how you would know and then not know, and then what I'm getting at, is whether you came in this courtroom this morning not knowing that the - - there was a claim that this was an ongoing investigation. Whether it - - Whether you had gotten conflicting evidence or information or not. So Mr. Karpinski, let me hear from you.

MR. KARPINSKI: Well your Honor, Judge Michael's affidavit, the first one he signed, but which was stricken because it was an electronic signature, in paragraph four says, "The records request by Mr. Holder pertained to an ongoing investigation conducted by the Washington County State's Attorney's Office in which the charges are pending. Based on the ongoing investigation and pending charges, disclosure of the requested records outside the usual Maryland Rule 4-262, the discovery process would likely interfere with said investigation."

And it's always been the defendants' position that the records were not produced based upon, uh, the, uh, information provided by the State's Attorney's Office that there were ongoing investigations.

THE COURT: It sounds to me to be the case. I'm going to overrule the objection, at least based on the failure to carry the burden that there is substantive prejudice to the petitioner. Go ahead.

(Respondents' Exhibit 4 was marked for identification.)

MR. KARPINSKI: Thank you. May I approach, your Honor? Let me show you what's been marked as Respondents' exhibit four.

A. Um-hmm.

Q. Did there come a time - - Would you identify that document?

A. Yeah this is - - this is an email that - - that, uh, I sent to Mr. Downey, um, because the, uh, charges were, in fact being reinstated because the defendant had reneged or Mr. Holder. I don't know what - - what he is here, but he was, in our - - in our - - in our shop at that time, he was a defendant and - - And, uh, the deal was, that there was some kind of resolution in the district court and a bunch of charges were - - were, uh, that if - - that if he stirred things up or if he

appealed, the deal was off and everything would be reinstated. And that was - - I didn't do that deal. I think it was Mr. - - Mr. Harbin and - - and, uh, Mr. Shapiro. Now I was getting - - getting - - That was my impression of what was going on. And then it fell apart because he appealed and I'm telling Kirk that yes in fact that the prosecution is reinstated.

MR. WEDDLE: Your Honor, same objection. None of this was raised or disclosed. In answers to interrogatories, this document was never produced. Um, this communication was never - - never told to us. I had the opportunity of deposing Mr. Bright. Obviously I didn't - -

THE COURT: I focused not on whether you were provided with that item that you say is discovery, but on the issue of prejudice. It's a two-prong matter on evidence. Was the evidence not properly submitted? Or was it - - And was it prejudicial or not? And if it's not prejudicial, then it's - - in the category of no harm no foul. Let me ask, Judge, are you - - are you waiting to send a jury out or closing arguments or what and are we interfering?

JUDGE MICHAEL: We're - - I told them that they - - that they should be back at 1:30, but that they might have to wait a little bit, so we're - - we'll finish our

evidence today. I'm good for a few more minutes.

THE COURT: Okay.

JUDGE MICHAEL: Thank you.

THE COURT: Let's us know if we hit a choke point.

JUDGE MICHAEL: All right. Thank you, Judge.

THE COURT: We'll work around you.

(Respondents' Exhibit 5 was marked for identification.)

MR. KARPINSKI: Your Honor, may I approach one last time? I want to show - - Your Honor, let me show you exhibit five. At some point did you prefer Mr. Morral's counsel to - - to the County Attorney's Office?

A. Yes.

Q. Okay. And what's the date of that?

A. Uh, August 12, 2021.

Q. Okay, and, um, that was in connection with, uh, documents that were being requested?

A. Yeah it was some kind of - - You know he asked - - He - - He asked for documents and we only give documents in - - in, you know, PIA's in closed - - closed cases and this was still open and going and I referred him to the county attorney, uh, because, you know, if there were, uh, because it was my impression it was county attorney business to take care of and not - - This was - - He wasn't a party and representing her in a

criminal case and wasn't entitled to criminal discovery.

MR. KARPINSKI: Okay. Your Honor, I move for admission of exhibits one through five.

MR. WEDDLE: Your Honor, same objection as to five.

THE COURT: Okay. Objection is noted. Over objection, those exhibits are admitted, one through five.

(Respondents' Exhibits 1 – 5 were admitted in evidence.)

MR. KARPINSKI: That's all I have, your Honor.

END DIRECT EXAMINATION

MR. WEDDLE: Your Honor, I was just gonna say my cross, uh, is going to take much longer than that and, uh, to the extent that, um, there's an argument that exceeds the scope, I - - I'd like to have an opportunity to call Judge Michael myself. Um, do you want me to start or - - or bring, uh, Judge Michael back?

THE COURT: Well let's - -

MR. WEDDLE: In deference to his - -

THE COURT: I want to work around Judge Michael's schedule.

JUDGE MICHAEL: Go ahead. Let's go ahead and - -

THE COURT: - - which affects a lot of people.

JUDGE MICHAEL: - - get to the point where - - where we at least get through this scope. So - - If that's okay with you, your Honor.

THE COURT: I'm just trying - - You're dealing with a lot of people that are subject, it's not just you. But I want to accommodate your schedule - -

JUDGE MICHAEL: Thank you.

THE COURT: - - and your lawyers, judges - -

JUDGE MICHAEL: If you want to call me back, I'll - - I'll make myself available to you, but as far as these documents go, let's go ahead and take care of that.

THE COURT: Okay.

MR. WEDDLE: Well I've got additional documents as well, so I'll go ahead and start and we'll see where we go.

CROSS-EXAMINATION

BY MR. WEDDLE:

Q. Um, you're familiar with the Weverton Rail Trail, is that correct?

A. Passingly, yeah. I know where it is, what it is.

Q. Okay. And you're familiar with along that Weverton-Roxbury Rail Trail private property, what's the rail trail, is that correct?

A. A lot of private property abuts the rail trail, it's very lengthy.

Q. Okay.

A. Both sides.

Q. And private property owners have taken to

encroach, I think you used the word, "encroachment," upon the Weverton Rail Trail, correct?

A. I only know of your client. Um, that's the only person I know of.

Q. So you don't have any knowledge of how many separate private property, uh, owners encroach on the Weverton-Roxbury Rail Trail?

A. No. The only one that's been brought to my attention is, you know, the only - - I've probably only had three encroachment cases in a long time and the one I recall is him. Uh, Mr. Physioc had one in - - up in - - up South Mountain, and then another one on South Mountain. It's kind of rare to be brought to our office. I'm sure that - - I believe you if you tell me, but I - - I - - The only ones I can recall those three.

Q. In your 30 years as a prosecutor, you can only recall three instances, uh, of encroachment on state land cases?

A. Where they've actually been charged. Usually they are resolved or they're border disputes.

Q. And in your 30 years of being a prosecutor, you only know of one, Mr. Holder, that was regarding the Weverton Rail Trail, correct?

A. The only one that I knew of.

Q. You're - -

A. The only I can recall though.

Q. Okay. You were head of the, uh, prosecutor - - prosecutorial department of Washington County?

A. I was - - At that time I was in charge of the district court, but I was the senior deputy. Mr. Strong's henchman. But at that particular time, I was in charge of the district court. And I also had a very close relationship with the Department of Natural Resource - - with the Natural Resources police. So that was - - generally would field their calls.

Q. And, uh, you said there were, four DNR or three DNR citations?

A. I think there were three. I'm going by recollection. I have not consulted any documents or anything like that.

(Petitioner's Exhibit 6 was marked for identification.)

Q. Mr. Michael, I'm handing you what's been marked as, uh, Plaintiff's six I believe.

A. Um-hmm, yeah.

Q. And this document is, uh, Natural Resources Complaint and Citation, correct?

A. Yeah.

Q. Okay and these show that - -

A. Citation is what I called it, yeah.

Q. They show the four, uh, citations, uh, pending or that were - -

A. Four, okay.

Q. - - charged.

A. Four, yeah.

Q. Okay. And those were "disturb a plant, rock and minerals," is that correct? Is one?

A. "Disturb a plant, rock and material, destroy a tree, driving in a non-designated area, private clearing on state park lands."

Q. Okay.

A. Pay - - All payable citations.

Q. Okay. And the first one is payable with a fifty-five dollar fine, is that correct?

A. Whatever it says there, yeah. Fifty-five, four-fifty, two-seventy, four-fifty.

Q. Okay. In your 30 years of - - of - - as a - - as a prosecutor, have you ever - - you've never investigated anyone, other than Mr. Holder, for activities on the Weverton Rail Trail, correct?

A. No that's not true, because we would investigate people all kinds of, uh, in the old days of, uh, I think it was, uh, a primary of lascivious behavior. But that's a much different area. It's down towards - - That's down towards the end of it.

Q. But the area in question, around Keedysville, recently you've never investigated anyone else other than Mr. Holder, correct?

MR. KARPINSKI: Objection. Relevance, your Honor.

A. Not - - Not - -

THE COURT: Sustained.

A. Me personally, no.

THE COURT: Sustained.

Q. Who conducted the investigation of these citations?

A. I think it was Miller. His name should be on here. All these - - All these, uh - - There were a whole bunch of young officers. I couldn't - - I couldn't recall. I think it was - - I think it was Jeremy Miller, but I'm not sure.

Q. When did the investigation begin?

A. I don't know. They came to me after the - - these citations were written.

Q. And what investigation did you conduct?

A. Oh gosh, I mean, I - - I listened to this endless stream of stuff that I never really read from Mr. Greivell and then, uh, bicker with the Department of Natural Resources about the fact that we were being lured into - - that - - that this was not the way to litigate their title on, uh, the Weverton Rail Trail and that it

was fraught with problems. But in the meantime, I was also, you know, uh, involved in, you know, a major case with Skadden, Arps, Meagher, Flom, Slate, down in Easton and - - and a whole bunch of stuff, so you know this was - - this was small potatoes and I - - I, uh, you know - - Most of it was just emailing back and forth with the Department of Natural Resources and Mr. - - arguing with Mr. Greivell and you know the fact that we weren't going to take up a lot of time in the district court considering we were backed up about this.

Q. Right, you didn't have time to conduct an investigation on this, correct?

A. Yeah I did. That - - That was the investigation. I - - I spent way too much time on this.

Q. When did your - - When did your investigation, your emails with Mr. Greivell end?

A. I don't know.

Q. Fall of 2020?

A. I have no idea. But the whol - - But the thing is, the investigation of this instance is not these citations, it's Mr. Estes', uh, complaint against your client for - - for whatever it was. And I really didn't - - I – You know, I know Ben, personal friends, so I referred him to somebody else in our office about his encroachment on - - on that property, Ms. Morral's

contact about him threatening to tear down her fence. This - - This - - And then whatever other charges were filed, and I forget what they - - Like I say, I wasn't involved. I don't know who the parties were, but it was - - it was an ongoing thing. The thing I remember is Mr. Harbin and Mr. Shapiro concluded it on the dates there in August of I think 2021, thought they had - - had it, uh, thought that would take care of it. But I was certain that it wouldn't because it's the type of case it is. So the overall, the problems - - When I left the State's Attorney's Office in February of 2022, yeah I think March 12th, I think I was put on March 12th of 2022. I worked up to noon that - - 1:00 o'clock that day. As of the date I left the State's Attorney's Office, that - - this issue - - this overarching issue, and all the criminal aspects of it, were still under investigation by my office because it was still a problem and it was our responsibility to get it solved. Absolutely, 100 percent under investigation. I wasn't investigating anymore, but it was under investigation.

Q. The Estes, uh, complaint, you recused yourself essentially from that, correct?

A. Yeah.

Q. Because you're friends with Ben?

A. I'm friends with - - friends with Ben Estes,

yeah.

Q. So you weren't investigating that? Yes?

A. Our office was.

Q. Not - -

A. Our office was investigating that. My employee, Mr. Shapiro, had that under investigation.

Q. What was he doing?

A. I have no idea. I was recused.

Q. Then how - - Then how do you know he was investigating it?

A. Because this - - Because I kept getting deposed, because I knew that there was trouble surrounding the situation down there. I know that it's not yet resolve. So it is still within the jurisdiction. And when I left, I don't know now, but when I left in March of - - of 2022, this was still an area of concern and investigation for the State's Attorney's Office.

Q. You getting deposed is not you being - - conducting an investigation, correct?

MR. KARPINSKI: Objection.

THE COURT: Overruled.

A. No, me getting deposed isn't, but that - - it's notice that this is still an ongoing problem.

Q. And you being deposed is not any evidence that Mr. Shapiro was doing one thing to investigate this,

correct?

A. Yes, it is.

Q. How?

A. Because he was - - he was sitting there with me. He sat in the - - He sat in the office when he was - - He was sitting in the - - in the - - in the, uh, room when your client deposed me when I was still there. He was sitting right there.

Q. Okay.

A. Because he was interested in what was going on. So I assume that he was investigating it. So that I do know. It was a videotaped deposition. I had - - I had three depositions with your client. I don't know which one this - - It was the one that was a video deposition while he was still represented by Mr. Harbin. That was - - So I knew that and that's why I didn't answer his questions because he was represented by Mr. Harbin, the case was still going on, so I knew that, yes, absolutely 100 percent knew that it was under investigation because he was represented by counsel, and the case was unresolved.

Q. And you were talking about, uh, I think you mentioned something about Christine Morral and tearing her fence down.

A. Yeah.

Q. Correct? Mr. Holder never tore her fence down, did it? Did he?

A. I don't know.

Q. Christine Morral's fence is located on her private property, is it not?

A. I don't know. I don't - - I knew there was some - - some dispute about that, but she thought it was. She asserted that it was her fence, yeah.

Q. And it was on her private property, correct?

A. That's what she asserted, yeah.

Q. Okay. And you told her to go get - - to go look into her title insurance, did you not?

A. I did tell her that. I did say - - That was a suggestion that I made, yeah.

Q. And Christine Morral's fence being on her property has nothing to do with the four DNR citations that are Plaintiff's exhibit five, correct?

A. No, but it has to do with the overall constant complaints we're getting about your client harassing Ms. Morral and the people in her - - in - - in the development.

Q. And what complaints were those?

A. That he was harassing them, that he was threatening to tear their private property down. They were calling my office, "Can you do something about this

guy?”

Q. And that - - No charges ever came of - - of the complaint with Ms. Morral’s fence, correct?

A. Well he charged her with wiretapping. The fence is right there in the - - in the - - in the videotape that - - that, uh, she took of him, so yes it does.

Q. And those - - And those charges were, uh, those charges were resolved on October 14th, 2020, correct?

A. Charges were nol prossed in exchange for her doing a number of hours of community service.

Q. Which she did, right?

A. Yeah and then it was expunged.

Q. Okay. So if Mr. Hold - - Mr. Holder, uh, submitted another PIA request on October 14, 2020 after those charges were dropped, right?

A. I don’t know. If that’s what it says. If that was the date, I - - You know.

Q. If he did - - If he did, the investigation as to the Christine Morral wiretapping would have concluded yes?

A. No. That’s what - - I mean what do you want me to say? When you have a citizen that is making trouble for other citizens and are causing calls to the State’s Attorney’s Office, that matter is under investigation. Period. When I left, it was still under investigation.

And, you know, you don't get your discovery until you get charged. We don't - - You know, I'm sure the State's Attorney's Office has hundreds of drug investigations going on right now that, you know, drug dealers can send - - can send a PIA in and say well I'm not charged right now or I was just nol prossed last week, we don't hand over the wiretaps or the warrants or - - or, uh, other documents that are pending. That's the nature of investigations.

Q. But the investigation - - The - - The only criminal charges as of October 3, 2020 were the four DNR citations, correct?

A. No, I don't think so. I don't - - I don't - -

Q. What others were there?

A. I think there was a variety of charges with Mr. - - that Mr. Harbin represented him that were appealed. I don't know the exact dates. But again, I think they involved Mr. Estes and other people.

Q. I'm - - You don't know as of August 2020 whether there were other pending charges, other filed criminal charges aside from the four DNR citations, correct?

A. August of 2020.

Q. Correct.

A. I don't know, but I know that there were other open investigations because Mr. Estes was complaining and

Ms. Morral was complaining. I know that at that point there open inves - - that it was subject to our jurisdiction because people were complaining about your client. And that situation existed until I left the State's Attorney's Office. Period. And may still exist, I don't know. I'll - - I'm going to go back up at 2:00 o'clock, okay?

THE COURT: If you thank you're good till then, that's - - that's certainly fine. Thank you.

JUDGE MICHAEL: All right, thank you Judge. If I could ask the clerk to inform them I'll be back up at two. They have a way of communicating.

(Petitioner's Exhibit 7 was marked for identification.)

Q. Your Honor, I'm handing you what has been marked as, uh, Plaintiff's seven. Oh, uh, excuse me, your Honor, Judge Jordan, I'd like to move, um, Plaintiff's six into evidence.

THE COURT: Six is admitted.

(Petitioner's Exhibit 6 was admitted in evidence.

Q. Your Honor, I'd like to focus your attention - - I'm sorry. I want to go to - - Excuse me. If you could refer to Plaintiff's one. There's a pile of papers up there. I apologize.

A. Yep.

Q. These are emails - - the emails we were discussing. Um, if you focus your attention on the 2:32 email between Mr. Bright and you, uh, dated August 4th. Do you see that email?

A. Um-hmm.

Q. And - -

A. Let me see. Hold on.

Q. Okay.

A. 2:32, is that a time?

Q. Yes, 2:32 p.m., uh August 4th, 2020.

A. Okay on the back. Okay, yeah.

Q. Okay. And this email references a zip file of 16 emails that were sent from Mr. O'Neal to Mr. Bright, correct?

A. Well the - - the one at 2:32 is from Mr. Holder.

Q. Okay.

A. You're talking about one to me? I don't know what you're tal - - I don't - - 2:32, that's from Mr. Holder to Mr. Bright.

Q. And I think we're looking at the wrong one.

A. It says August 3rd, 2020, 2:32.

Q. August 4th.

A. 3:35?

Q. If I may? I'm sorry. This email right here,

sir.

A. All right.

Q. You'll see that Mr. Bright is sending you a zip file of 16 emails that Mr. O'Neal found of communications between Christine or Scott Morral and yourself.

A. Um-hmm.

Q. Correct?

A. Yeah.

Q. Did you open that zip file?

A. I don't recall. I doubt it.

Q. Did you read those 16 emails?

A. I doubt it.

Q. Why not?

A. I didn't need to.

Q. Why - - Why did you not need to?

A. Because your client was a criminal defendant.

Q. Excuse me?

A. Your client was a criminal defendant and - - and the, uh, you know, they did a computer search, it was responsive, and you know, I don't - - It was part of a criminal investigation. Ms. Morral, the whole thing, was all part and parcel of the same thing and I - - You know, if I was party to them, I remembered them at the time and didn't need to open them, but I don't think I opened them.

Q. So how could you - -

A. If I was - - If I - - If I was in the chain, I could have remembered them at that time. I don't remember them now.

Q. Okay, so you don't remember when - - whether any other charges, but the DNR citations were pending?

MR. KARPINSKI: Objection. I believe the witness has already answered this.

THE COURT: Overruled.

A. I don't - - I don't know if there is any other charges - - charges pending or not. Charges are not related - - Whether the existence of charges or not, is not whether or not an investigation exists regarding your client. But you're right, I'm only aware of those four charges. There could have been other charges, I don't know.

Q. Okay.

A. And I think that there was - - There was something going on with Ms. Morral that was of a criminal nature.

Q. But you don't remember if there were criminal charges pending at that time?

A. I don't remember when - - what period of time there were.

Q. And if you didn't read the emails or you didn't

open them, how - -

A. I didn't open them. I had - - I was aware of what they were and what the situation was.

Q. How could you determine there was an ongoing investigation and pending charges if you didn't even read the emails?

A. Do you have any idea the comprehension of my job at the time? I do so many different investigations and this one, this tempest in a teapot was taking an overwhelming amount of time during a public health epidemic. So it was unavoidable that I would know that your client was sucking the resources out of my - - my job. I couldn't avoid it. That's how I knew.

Q. How could you - - But you couldn't determine whether, you know, one email would - - would be related and one would not be related, correct?

A. They're all related. All related.

Q. All related.

A. I did - - They're all related.

Q. Okay.

A. If it's coming to me to ask me in the State's Attorney's Office, it's all related to a criminal investigation.

Q. Your Honor, can you turn to page, uh, I think it's exhibit seven, PIA nine?

A. All right. Yeah.
Q. And this is an email from you to Christine Morral, correct?
A. Uh, okay that's what it says it is, yep.
Q. Okay. And it's your testimony that these emails were regarding the DNR citation that - - that were pending at the time, correct?
A. No, they're regarding this whole imbroglio down there of harassment, trespass, the encroachment, everything.
Q. Okay. Property claims.
A. Well criminal claims too. There are civil claims as well but - - but really my - - my involvement was as a - - as a - - as a - - you know, as a, you know, responding to a citizen complaint.
Q. But they were criminal claims related to property issues.
A. Yeah. Yes. Well also there were violations of peace order, threats, threats, things like that. Threats to destroy property, threats of physical danger, wiretapping, different things besides property.
Q. Threats that were not carried out, correct?
A. I - - Yeah I don't remember there being any threats carried out.
Q. Okay. And in your email, you said - - you're

talking to Ms. Morral and you're - - you're claiming not to be an expert in this kind of civil proceeding, correct?

A. Yeah.

Q. And in - - But you're telling her to go get title insurance, right?

A. Well I suggested that if she - - if she has a civil case, to go seek, um, recourse with her title insurer, advice I give a lot of people, yeah.

Q. And that has nothing to do with the pending criminal charges, correct?

A. Yes it does. Absolutely.

Q. Your - - Your advice to her to go - - go talk to her civil or personal title insurance, what relevance does that have to your criminal investigation?

A. My interaction with a citizen as the Deputy State's Attorney, with any citizen, was of a nature related to our investigations and keeping the peace in Keedysville. And, therefore, was part of a criminal investigation.

Q. How does telling someone to get title insurance - - to go invoke their title insurance have any relevance to keeping the peace in Keedysville?

MR. KARPINSKI: Objection.

THE COURT: Sustained. Sustained.

Q. Moving to the - - Same - - Same document.

A. Okay.

Q. Number nine. You say, "Here's the basic problem in criminal court: if he has (meaning Holder) if he has a recorded piece of paper that says there is a right-of-way appurtenant to his property across the neighboring properties, whether it has been extinguished or not, and whether it will win him in his civil suit or not, won't matter. He just has to generate a reasonable doubt as to whether he has a right or not. And the State has the burden of proving that he does not, which without a circuit court order showing that one of the other parties has quieted the title to the disputed property, we can't do in criminal court and everybody walks out no better off." You wrote that, right?

A. I did. Which is why I say that it links directly to a criminal investigation.

Q. A criminal investigation that you can't prove. You're telling Morral you can't prove it.

MR. KARPINSKI: Objection.

THE COURT: Sustained.

A. Thank you.

Q. When you're saying, your Honor, that you - - that you - - that - - that all Mr. Holder has to do is generate a reasonable doubt, you're telling Morral that

she has - - the criminal court has - - has no ability to resolve this issue, right?

MR. KARPINSKI: Objection.

THE COURT: Sustained. It's argumentative. I don't imagine, Mr. Weddle, that you're going to be finishing in the next minute or two, so we really need to - -

JUDGE MICHAEL: Thank you, your Honor.

THE COURT: - - Judge Michael back upstairs.

JUDGE MICHAEL: All right.

THE COURT: When - - What is - - What availability might you have? I understand you might be going out of town?

JUDGE MICHAEL: No, I'm not going to be out of town. I wanted - - As soon as my criminal trial, uh, ends, I want to take off the - - the balance of the time, but you know, I'll come back to help get this resolved.

THE COURT: Well I mean whatever you're doing, at this point, I can't preclude counsel from finishing inquiry fairly.

JUDGE MICHAEL: Right.

THE COURT: We could do it by phone, if need be.

JUDGE MICHAEL: Well I'll - - I'll come back. I'll just let - - Just, uh, let me know when I'm supposed to come back.

THE COURT: Okay.

JUDGE MICHAEL: All right.

THE COURT: Well we'll, uh, we'll leave that - - Mr. Karpinski, if you could be the go-between?

MR. KARPINKSI: I will be, your Honor.

THE COURT: With Judge Michael.

JUDGE MICHAEL: Thank you, Mr. Karpinski. Thank you, your Honor. So long.

MR. HOLDER: Thank you for your time, your Honor.

JUDGE MICHAEL: Certainly.

MR. KARPINSKI: Thank you, your Honor.

CROSS-EXAMINATION CONCLUDES FOR THE DAY

MR. WEDDLE: Your Honor, if I may just sort of collect my thoughts here and get this back in order?

THE COURT: Sure, take your time. (Pause for approximately two minutes.)

MR. WEDDLE: Your Honor, um, while we have a lull, um, we had subpoenaed, attempted to subpoena I think a Tally Kovacs with the DNR, um, to bring her in to get into evidence, uh, certain emails between Ms. Kovacs and Judge Michael. Um, she was subpoenaed to come today. Uh, she's not here. Um - -

THE COURT: You had her properly served I assume?

MR. WEDDLE: Well we made three attempts. We filed, uh, we filed an affidavit that I've got somewhere in this morass of papers, um, that the process server made three

attempts and posted the subpoena. Um, she's not here. Um, I could show the documents to Mr. Karpinski and if he'll, I guess, stipulate to their admissibility, we may not need to pursue the issue.

THE COURT: Okay.

MR. KARPINSKI: Well I - - I haven't seen them, but Judge Michael was here. Between Judge Michael and Ms. Tally, why didn't you ask him then?

THE COURT: Well - -

MR. WEDDLE: Well I mean I wasn't - -

THE COURT: Let's first of all, see if you all can agree.

MR. WEDDLE: Yeah, sure. I'll be happy to give them to - -

THE COURT: Perhaps hope against hope. But if you can, then that's a moot point.

MR. WEDDLE; Yeah. That's wh - -

THE COURT: If you can't, we'll figure out what to do.

MR. WEDDLE: Okay.

THE COURT: So - -

MR. KARPINSKI: Do you want to take a couple minute break and we'll confer?

THE COURT: Yeah a little bit early in the afternoon, but yeah, we're going to be carrying over clearly until

Monday anyway, right?

MR. KARPINSKI: Yes.

THE COURT: Yeah, so, yeah why don't you consult? Get word back, uh, behind us and, um, we'll start - - give you a little more of a break, get a break yourselves and then we'll get started.

(Whereupon at 2:03 p.m. court was in recess. At 2:18 p.m. court reconvened and the following ensued:)

THE COURT: Please have a seat. Okay I know we were out of scheduled witnesses, obviously. The next witness I guess for Mr. Weddle's side of the chair, tables.

MR. WEDDLE: Your Honor, I - - before we took a break there was an issue about some emails, uh, between, uh, Ms. Tally Kovacs and, uh, Joe Michael, Judge Michael – two emails, one dated, uh, October 1st, 2020, 12:03 p.m.; and another dated November 12, 2020 at 5:13. Um, I asked if Mr. Karpinski had any objection to just, you know, admitting those into evidence in light of the subpoena issued? I don't want to speak for Mr. Karpinski so - -

MR. KARPINSKI: Well your Honor, I don't believe they're relevant. I don't question their authenticity. It's a bench trial. Your Honor will give it - - give it whatever weight, if any, you believe that it deserves.

THE COURT: Okay. Thank you for that accommodation. So are you moving them into evidence?

MR. WEDDLE: Yes, your Honor.
THE COURT: And what are the numbers again?
MR. WEDDLE: Uh, I'll do them, uh, the October 1st, 2020, uh, email at 12:03 I believe it - - it is eight. And the November 12, 2020 email, Plaintiff's nine.
(Petitioner's Exhibits 8 and 9 were marked for identification.)
MR. WEDDLE: I'm trying to give your Honor copies.
THE COURT: So it's the two of them?
MR. WEDDLE: Yes.
THE COURT: Plaintiff's eight and nine are admitted. Mr. Karpinski, thanks for your accommodation.
(Petitioner's Exhibit 8 and 9 were admitted in evidence.)
MR. KARPINSKI: You're welcome.
THE COURT: And I understand your point, as with any of the pieces of evidence about whether they're relevant or not. It doesn't mean everything comes in, at least close enough to give it a shot.
MR. WEDDLE: Your Honor, I'd like to - - Mr. Adam Greivell is out in the hallway. I'd like to call him.
THE COURT: Okay.
MR. WEDDLE: May I do that (unintelligible)?
THE COURT: Yes.
MR. KARPINKSI: Your Honor, before - - before we call

Mr. Greivell up, I would respectfully request a proffer as to what his testimony is going to be because we seem to be relitigating whether the State's Attorney's Office had some basis for going ahead and investigating and filing charges against, uh, Mr. Holder. The State's Attorney's Office is not a defendant in this case. And the State's Attorney's Office, uh, Mr. - - Mr. Michael is not a defendant in this case. Really - - It really comes down to really whether the County Attorney's Office and the county could reasonably rely upon the representations of the State's Attorney's Office with what - - with regard to whether there are ongoing criminal, uh, investigations and proceedings. Whether they were meritorious or not, that's not for the County Attorney's Office to second guess. And so I assume Mr. Greivell is going to be called as a witness to testify regarding the criminal proceedings. Mr., uh, Bright and Mr. Downey wouldn't have anything to do with that. They're the two individuals who are defendants in this case.

THE COURT: First of all, let me interrupt you. Who is Mr. Greivell and what's his role and give me some background? Greivell.

MR. KARPINSKI: Mr. Greivell - - Mr. Greivell is a local attorney that I believe Judge Michael referenced that he was dealing with in connection with the district

court proceedings with regard to the DNR citations. But again, that is wholly collateral to what is at issue before the Court with regard to whether the county had a reason - - reasonable good faith basis to rely upon what was said to the county by the State's Attorney's Office.

THE COURT: And what is your position? I apologize if I'm not just able to articulate it on my own. Your position about who really was the deciding party on one or more of these decisions, you know, where the buck stopped in terms of the, you know, the Public Information Act?

MR. KARPINSKI: Well - - Public Information Act manual as well as the case law says that an agency would deny the request on its own, an agency that would otherwise be in possession of those records, should deny it as well. I think it's pretty clear from the exhibits the Court has, that Mr. Bright forwarded the information to Mr. Michael and Mr. Michael went ahead and indicated that the State's Attorney's Office had ongoing investigations. And again, what - - the merit of those investigations, the merit of any criminal charges that may have ultimately been filed against Mr. Holder or Ms. Morral or any of these other individuals, that's - - that was not involving the County Attorney's Office. So to call a criminal defense lawyer and say, "Well yes I

represented Mr. Holder in connection with these matters and I had these discussions with Mr. Michael," that's not at all relevant to this MPIA case. So I - - That would be - - That's my objection and I would be requesting a proffer as to what Mr. Greivell could testify to that would be relevant to the issues before your Honor.

THE COURT: Fair enough. I'll hear from you Mr. Weddle, what do you want to say as far as this witness's testimony? Is he just going to opine about he understood the state of the investigations, charges, et cetera?

MR. WEDDLE: Not only that, your Honor, but the whole - - the whole denial here, as I understand not, taking a step back, in the denials that the county made to Mr. Holder they never articulated a basis, a specific enumerated basis. They called him a person in interest but under, uh, 14 - - I'm sorry, 4-351(b), he's a person in interest and they could only deny is request for seven enumerated reasons in that statute. They've never - - They never articulated one. As we got through discovery, it seemed that they've - - they relied upon the one which says, "A custodian may deny inspection by a person in interest only to the extent that the inspection would, (1) interfere with a valid and proper law enforcement proceeding." Okay?

So the county has essentially, as Mr. Karpinski

stated, their defense is essentially to act as a pass-through entity, as a pass-through agent of - - of - - of Judge Michael's decision. Part of our case is to prove that there was no valid and proper law enforcement proceeding. And this is why I was directing Judge Michael's attention to PIA-9, where he states that the criminal court can't do anything for you. Okay? There's these four DNR citations, but because Mr. Holder has raised an issue about his rights to be on that property, we can't do anything. All - - The burden is not high, and - - and for Mr. Holder to, uh, to defend these charges.

Mr. Greivell, who, if your Honor recalls Judge Michael testified to, mentioned him by name, testified that he was talking to, uh, Mr. Holder, Mr. Holder's attorney, Mr. Greivell, he opened the door for that. We've got communications from Mr. Greivell to Judge Michael explaining that this case - one, we want discovery; two, we want Brady; three, we don't have probable cause to continue this case. And that's in the fall of 2021. I'm sorry, 2020, excuse me. Thank you. And the fact that these charges, these DNR citations charges, these four charges that really have never been prosecuted against anyone else, you heard, the fact that they're being lorded over Mr. Holder to - - as a basis to

deny him the 16 emails he seeks, is - - is very germane and relevant to the case. Um, you know, we - - Again, we've got email correspondence back and forth, uh, with - - with Judge Michael and Mr. Greivell fleshing this out. It's - - It's certainly relevant, he mentioned it. So I'm frankly not understanding the relevance objection here because Judge Michael opened the door to it.

MR. KARPINSKI: Your Honor, first of all, Mr. Weddle says that the county didn't - - didn't indicate the reason. The county specifically, the State's Attorney Office has advised that you will - - the records you have requested are in fact of an ongoing investigation and current - - and current prosecution, therefore I must deny your request.

The point here is, is that - - that Judge Michael is not a defendant in this case. And to sit there and say well that Mr. Bright and Mr. Downey can be liable because, uh, the State's Attorney's Office made a mistake. That's not the law and I don't think it's at all relevant what conversations are heard between Mr., uh, Mr. Greivell and Judge Michael because that's not what was conveyed to Mr. Bright. Mr. Bright was given information from the State's Attorney's Office, and reasonably relied upon that information. So now we've gone into this collateral area of discussions between

Judge Michael, or then former Deputy State's Attorney Michael, and Mr. Greivell about criminal proceedings when the State's Attorney's Office is not a defendant in this case. And quite frankly, you know, I'm not real sure why these requests weren't submitted to the State's Attorney's Office in the first place. And in hindsight, maybe the county shouldn't have even answered this and directed the - - the, uh, Mr. Holder to the State's Attorney's Office.

MR. WEDDLE: Your Honor - -

THE COURT: The Court is gonna, um - -

MR. WEDDLE: - - can I just - -

THE COURT: First of all, considering where the burden of proof lies in this scenario with the PIA, I do think that there is - - that it is appropriate for the plaintiff to try to show that the - - to state the obvious, to try and show that the, uh, denial was inappropriate or at least unreasonably relied upon. That may or may not carry the day, but, um, I'm falling mostly on the side of where the burden of proof lies and how each party should be able to reasonably present its position. And therefore, there can certainly be an ongoing objection to this witness being calling, uh, I'll rule on any specific objections during the course of the testimony or felt to be necessary beyond that, and I'm

not going to totally preclude the witness from coming in, being sworn, and subject to examination. So - -

MR. KARPINSKI: Thank you, your Honor. May I have an ongoing objection to this witness?

THE COURT: Absolutely.

MR. KARPINSKI: Thank you, your Honor.

THE COURT: Thank you.

MR. WEDDLE: May I go out to the - -

DEPUTY: He's there. I'll bring him in.

MR. WEDDLE: Thank you.

THE COURT: Mr. Seligman, do you have a minute to step up here? You can come straight through. (Pause for approximately 20 seconds.) Okay, sir, if you could just stand up and we'll swear you in, then you can sit down.

MR. GREIVELL: Yes, your Honor.

TESTIMONY OF ADAM GREIVELL

ADAM GREIVELL, having been duly sworn, did testify as follows:

DIRECT EXAMINATION

BY MR. WEDDLE:

Q. Good afternoon, Mr. Greivell. The Court has allowed me to sit while I inquire, so - -

A. Very well.

Q. Thank you. Um, would you state your name for the record please?

A. Adam Greivell.
Q. Okay. And you know Mr. Holder, correct?
A. I do.
Q. Could you describe your relationship with him?
A. Um, well lately he's been a client. Um, he came to be in probably 2016 or '17, thereabouts, and, uh, for some small civil matters, and we recognized that he actually had been a friend of my brother growing up. I didn't know him, but, uh, my older brother, who passed away, um, to suicide in 2004, at the age of 27. Anyway I guess we discovered he, uh, had carried my brother's casket at the funeral. I didn't remember, but, um, so since then, a series of small civil matters and, uh, probably since 2018, 2019, um, you know a number of, uh, been representing him in quite a few matters, um, sort of persistently through the last four or five years.
Q. Take you a step back. You're obviously an attorney licensed to practice law?
A. That's correct.
Q. In what state?
A. Maryland.
Q. Okay. Just Maryland?
A. Licensed federally as well, but in the state.
Q. Okay, but when - - when did you become licensed to practice law in Maryland?

A. 2005.
Q. Okay. And have you practiced, uh, law consistently and continuously since then?
A. Yes.
Q. And where do you practice?
A. Right now, Washington County, primarily. I do - - My office is here.
Q. And, uh, what - - what types of legal work do you represent clients on?
A. Primarily civil litigation, um, some, you know, criminal defense, personal injury, real estate, contract disputes, uh, construction, civil employment, constitutional issues, et cetera.
Q. Are you familiar with the, uh, with four DNR citations, uh, tickets, if you will, that, uh, Mr. Holder was charged with in or about early June of 2020, correct?
A. Yes.
Q. And, um, I'll refer to those as the DNR citations.
A. Fine.
Q. And did you represent Mr. Holder, uh, with respect to those?
A. Yes, for, um, for - - well sort of unofficially for a period, or I should say, I wasn't entered in the case originally, and then I did enter and participate in

discovery for a period and then, um, Mr. Holder retained David Harbin, at sometime, I'm guessing late fall of 2020, and I - - I wasn't - - I think my appearance was substituted out.

Q. Okay. And, uh, in the course of your representation of Mr. Holder, um, did you have, uh, did you have an opportunity to correspond with Judge - - now Judge Michael?

A. Yes.

(Petitioner's Exhibit 10 was marked for identification.)

Q. Sir, I'm handing you what has been marked as Plaintiff's exhibit 10.

A. Okay.

Q. Would you review that and tell me what that document is?

A. This looks like the discovery letter I sent to, uh, Joe Michael. Um, your Honor, is it okay if I call him Joe Michael, instead of Judge Michael or?

THE COURT: Well that's what you were calling him back then, so that's certainly fine.

A. Thank you. I sent that to Joe Michael on September 11, 2020, probably at the same time I filed and entry of appearance into the case.

Q. Okay. And the - - the discovery, uh, you

requested in this letter, I believe, is 19 categories of - - of discovery, is that correct?

A. Uh, yes.

MR. WEDDLE: Your Honor, I would like to move for admission of Plaintiff's 11.

THE COURT: Uh, it's 10, isn't it?

MR. WEDDLE: I'm sorry, 10. You're correct.

MR. KARPINSKI: Same relevance objection, but - -

THE COURT: Objection is noted. Plaintiff's 10 is admitted.

(Petitioner's Exhibit 10 is admitted in evidence.)

Q. If I could focus your attention, Mr. Greivell, to, uh, page three or four?

A. Okay.

Q. Could you, uh, read into the record the last paragraph of - - of three and finishing to the end of the letter, please?

A. Sure. "Please note that we have reason to believe that the State of Maryland possess evidence related to the inferiority of its claimed title to the property. Because the State's case rests inexorably upon its ability to prove beyond a reasonable doubt that it owns record title to the property, it is the expectation of the defense that all information in the possession,

custody, or control of the State of Maryland related to the strength of its claim of title to the property be disclosed reasonably in advance of trial so as to enable the defense and its experts reasonable opportunity to inspect the same and conduct their own investigations based thereon. To the extent that the State is determined to be in possession of such exculpatory information after any conviction may be obtained in this matter, the State is hereby placed on notice that the defendant will assert that the failure to provide the same information prior to trial may be a basis for a reversal.

Additionally, please furnish all other material information - - material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offenses charged and all material or information in any form, whether or not admissible, that tends to impeach a State's witness.

Thank you for your assistance in this matter."

Q. Thank you. The, uh, on page three, you referenced, "the property." What - - What did you mean by that?

A. Um, I'm certain I was talking about the abandoned railroad quarter in the vicinity of, um, Antietam Drive

in the Stonecrest neighborhood in Keedysville.

Q. And, uh, why did you send this, uh, letter to Judge Michael, uh, with these 19, uh, requests for discovery?

A. Well customarily, I don't address a discovery letter to an individual, uh, state's attorney. Normally it's just sent to the State's Attorney's Office, um, and I believe if I recall, Mr. Holder and I had been in court because Christine Morral was a defendant in a prosecution for violating the wiretapping statute, and Mr. Holder was the complaining party in that matter. And I believe we had a - - a conversation with Joe Michael in the hallway in the district court that day. It's a little fuzzy. It's a long time ago. But I think Joe physically handed, either myself or - - I think it handed it to Justin because I wasn't entered in the case yet. I think he handed a discovery letter. Um, it's not that common in my experience for the State's Attorney's Office to request discovery of a defendant, um, but it is permissible per the rules. And so I think that's probably what prompted me to go ahead and enter an appearance and send my discovery request to the State. And I - - That would be why I sent it directly to Joe Michael because he, evidently had some interest in being involved or maybe had already been assigned to the case.

Uh, in my experience, State's Attorney's Office doesn't assign prosecutors until about two weeks before trial, so there being no trial date, I thought that was unusual.

Q. And the discovery letter that you referenced that was handed to Mr. Holder, that was in res - - in respect to the - - the four DNR citations, correct?

A. Uh, that is correct. I'm sorry, I - - I think you asked me why I sent the letter asking - -

Q. Yeah.

A. - - for all those things. I don't know if you wanted me to expand on that or not.

Q. I do. Go ahead.

A. Um, again, in ordinary discovery letter is a form, template, which consists of the first six, um, items of request. That's, again, pretty much boilerplate and it comes straight out of the rules. Uh, I expanded this due to the fact that I had done considerable research, along with my client, um, into the State's claim of title to the abandoned railbed. Um, and obviously I perceived that it was com - - completely relevant to the State's ability to charge and convict Mr. Holder was that the charges only apply - - the citations only apply if they're on state park land. And it can't be state park land if it's not owned by the State. And, uh, our research indicated that the State's claim to

title was pretty infirm and in fact we knew of quite a bit of controversy over the last 30 years, uh, by delegates, by county commissioners, by citizens challenging the State and the DNR, uh, and their claim of title. So I - - I thought they must have tons of information in their files that show that they know or have reason to believe that they don't have good title to this railbed that they want to now convict my client for being on.

MR. KARPINSKI: Objection. Move to strike.

THE COURT: The, uh, objection is sustained based upon the opinion stated by a fact witness.

MR. WEDDLE: What - - What part of his testimony was stricken, your Honor?

THE COURT: He's expressing an opinion as a fact witness. Now you can present facts to the Court and the Court can or cannot, either way, see if your way as far as whether - - whether there is adequate evidence. But for a fact witness to offer an opinion is the problem I've got. I'm not sure if that was the objection but it doesn't need to be articulated specifically unless asked by the Court.

Q. Mr. - - Mr. Greivell, what, uh, I think you mentioned that you had evidence to suggest that the State's, uh, title was infirm. What evidence did you

have of that?

A. That's a long - - There's a long answer to that question, a lot of evidence. Um - -

MR. KARPINSKI: Objection. Relevance.

THE COURT: Can you ask that question again?

Q. Sure. During your - - your testimony, you stated that you have evidence that the State's title to the, I believe you called the abandoned railroad bed?

A. Yeah.

Q. Is infirm. What - - What evidence do you have to support that?

MR. KARPINSKI: Objection. Relevance.

THE COURT: Well I'm going to overrule the relevance at this point, but I think he can ask the question as to what information did you have to lead you to any conclusions in this case without going to the conclusions in the form of opinions?

MR. WEDDLE: Thank you, your Honor.

A. At that time, obviously had read the deed itself that the State procured from the CSX Railroad Company. Um, the last page of that deed, uh, was actually a letter from CSX agreeing to indemnify the State against any challenges to the title for a period of 10 years. Um, that was a very unusual letter. Um, and I - - Well the research that we had conducted indicated that the, um,

railroad itself had gone through regulatory abandonment for that - - that line of track, the two miles of, more or less, from Weverton to Hagerstown to Roxbury. Uh, in I think 1975 was the official date of commencement of the abandonment proceedings that, I believe, through the ICC of the - - whatever, um, Interstate Commerce Commission. Um, that was concluded in 1978. Uh, the - - There was a rail banking statute federally that came into place in the early to mid-1980's, 1983 to 1985, which would have, if it was operable at that time, enabled the State, uh, or subsidiary jurisdictions to, uh, save the railroad as a right-of-way, but that wasn't in existence at the time. The, um - - And the facts were evident, um, based on our research, that the regulatory abandonment was completed around 1978, the tracks were removed, uh, maybe 1981 or thereabouts, and the bridges were taken down.

Um, so without getting into opinion, uh, my reading of the case law was pretty clear that there's, you know, there's a reverter under these circumstances to the private property owners so that when the State purchased a quit claim deed in 1991, um, I think the State got - - Well a quitclaim deed only conveys such title as is held by the grantor at the time of the granting. And it was, uh, seemed to be evident that CSX had not title in 1991.

Q. And, um, have you gone out and visited the, uh,

the railroad property - -

A. Several time, yes.

Q. - - at issue?

A. Yes.

Q. Okay. And you're familiar with it?

A. Yes.

Q. Okay. And, um, you know, um, the - - the land at issue in the DNR citation is the state-owned land that you just testified, or the, quote/unquote, "state owned land," that you just testified to.

A. Not exactly. Uh, and we discovered this later in discovery, um, when Joe Michael turned over the, uh, DNR's, you know, forestry expert or whatever, saying that this is what it would cost to replant the vegetation that had been cleared and he indicated that, upon his belief, that most of the vegetation was cleared on land that's not even claimed by the state. So that was part of the problem is that the - - the original deeds granting to the railroad granted variable widths, depending on the slope of the, uh, where the railroad tracks would be, uh, because when the deeds were granted, the railroad tracks weren't there. Um, and so, it's at least 33 feet on either side of the center line of the tracks, but it - - if it's, you know, if it's an embankment downward, it extends an extra foot of foot and a half per foot of

embankment and on the other - - If it goes up, it's another foot or foot and a half the other - - So the tracks to - - The - - The title lines to the tracks go in and out or to - - to the bed, go in and out. Um, so anyway, all that is to say that, um, I was familiar with the area that Mr. Holder had, um, had been working in. You can visibly see where it had been cleared. Um, I got, you know, a val map, a valuation map from the railroad itself, um, and another one from - - from the State in discovery in the - - in the citation case, showing that in 1918, when the valuation map was drawn, this very path actually crossed, some of it in the railbed and some of it outside of the railbed. So it wasn't clear to me that the - - the - - the activity that Mr. Holder was accused of conducting actually took place on land that's even claimed by the State.

Q. You mentioned, uh, I think a - - did you say a 1918, uh, val?

A. Valuation map, a val map for short, yes.

Q. Was there evidence before that 1980 - - 1918 valuation map that you looked at or is that the earliest evidence?

A. Evidence of what?

Q. Of, uh, of a - - of a - - of a road, a path, any sort of - -

A. The road, yes. The - - As far as I'm concerned, the 1918 is the earliest depiction that attempted to be accurate to the width of the railbed, but oh yeah, there's maps going back to 1867, um, the - - you know, the Honorable Secretary of War commissioned the map to be done of the - - the Sharpsburg/Keedysville area, um, which depicts a path, uh, you know, or road, a continuance of Mount Briar Road across Dog Street Road, straight up through Jeff Young's property which runs right up into what would have been sort of the corner of where - - where this road, um, that shows up in the 1918 val map, in, if I recall correctly, 1907, U.S. Geological survey map shows that road continuing further and actually right along side the tracks in - - in the same area that's depicted on the val map. Um, there is a, um, 1936 atlas by I think it's J.D. Ferguson, we call it the Ferguson atlas. Um, it's kind of famous in the county here. I believe a 12-foot rendition of that road atlas hangs in this courthouse downstairs, um, in the land records room. Anyway, that depicts a road continuing from Mount Briar Road up across, um, Dog Street Road through Jeff Young's property, right behind Christine Morral's property, along side, you know, the railroad tracks and circling out to Main Street, which connection from behind Stonecrest down to Main Street, today

everybody calls it Antietam Drive. Um, in fact, it's funny, just down the hallway over here, there's a picture of Felfoot Bridge and it, um, the inscription, you know, carved into the metal plague out there, um, references the same road. Um, in 1954, which was commissioned as part of General Braddock's route. And I bring that up because, uh, I read a book by a historian, a local historian, Ted Ellis, who - - I was flabbergasted. I bought the book because I was interested in this matter and when I read his conclusion, I almost fell out of my chair because he - - he concluded in his historical analysis - -

MR. KARPINSKI: Objection. Relevance, your Honor.

THE COURT: I'm going to find it relevant because it's really interesting.

MR. KARPINSKI: Okay.

A. It's not - -

THE COURT: Not to the case.

MR. KARPINSKI: If your Honor wishes to hear it, I find it interesting history as well.

THE COURT: But, uh - -

A. I'll finish up.

THE COURT: - - I understand your point about why we're here. Fascinating so far. What book is that? Never mind.

A. Uh, it's - -

THE COURT: Never mind.

A. I think it's called "Keedysville," if I'm not mistaken. The town - - It's the history of Keedysville. Anyway, his - - his conclusion, um, seemed to be that they - - that road, the very road that Mr. Holder was charged with clearing vegetation on was the path that General Braddock and George Washington had took in 1755. So there's, as far as I'm concerned, there's almost 300 years of history of this thing being a road.

Q. Thank you. Um, what is - - What is the im - - What is the importance of this road, um, with respect to these DNR citations?

A. Well - -

MR. KARPINSKI: Objection.

THE COURT: How does he - -

MR. KARPINSKI: It calls for a legal conclusion.

THE COURT: - - express that without an opinion? I think he's - - I think you've presented enough facts from this fact witness from which the Court may be able to determine whether matters - -

MR. WEDDLE: Understood. Understood. Um, one point about this road, uh, has it been known as different names throughout the history?

A. Well yeah. Um, roads change names quite

regularly throughout time. Um, this one in particular, the earliest reference to a name that I can find was from Keedysville Townhall minutes. Um, I think 1961, they decided to name the streets and, um, what they said with regards to this road was that Harris Lane will keep its traditional name. Um, and they described this road as running southeast of, um, off of Main Street, like south, southeast of the creek, uh, and running parallel to the railroad tracks. And this is the only conceivable path that matches those descriptors. Um, I found the census, um, from early 1900's, which called it "Railroad Hill." It was for the, uh, attract owners, um, probably Kretzer, in maybe 1910. I haven't seen any other reference to that. It has been called "Harries Street" or "Harrise Street" and I say that because it's alternatively spelled H-A-R-R-I-E-S or H-A-R-R-I-S-E. I think there's a plat 234, I want to say maybe 1945 timeframe, maybe in the 1930's, which depicts sort of stub of a road in the area coming off of Main Street towards what - - you know, doesn't quite go all the way back to the - - the former Kretzer properties on that plat, which is the Holder properties now.

Um, and – and actually that - - that is - - That Harrise Street is referenced by plat number on the Stonecrest Plat 8292. Um, and we found that interesting

because Antietam Drive on that plot of name, on that plat, isn't depicted as a public road, um, but the town believes it's a public road in that area, per their statements and testimony. Um, but it didn't appear - - To us, it didn't connect. The Harry Street didn't connect to the right-of-way shown reserved, dedicated, whatever, on the plat 8292, so we kind of joked that well you can get to the edge of the Stonecrest property and then look at a really nice right-of-way by plat, but you can't get there. So it's kind of a road to nowhere by plat.

Um, anyway so the names - Harrise, Harris, Harries, and obviously Antietam Drive as of late.

Q. Thank you.

A. And that was, uh, the Harris Street, naming it Harris Street because its traditional name was also published in the newspaper.

(Petitioner's Exhibit 11 was marked for identification.)

Q. I'm handing you what has been marked Plaintiff's 11. Would you take a look at that document and identify it for me?

A. Uh, yeah, this is an email sent from Joe Michael in response to my discovery letter of the same day.

Q. All right. And, um, I'm going to point you to

the paragraph that, uh, on page two of the letter, beginning with, "The State respects your wisdom as a practitioner."

A. Okay.

Q. What was your - - Uh, can you read that, uh, can you read that paragraph and tell me what your understanding of that was?

A. Um, sure. "The State respects your wisdom as a practitioner and gives great credence to your representation that the State's case rests inexorably upon its ability to prove beyond a reasonable doubt that it owns record title to the property. The State, meaning the State's Attorney's Office, has asked the Department of Natural Resources to provide details of its ownership because, as you state, the status of the Department of Natural Resources ownership and the classification as a state park property may well be crucial elements of the current crime. On the other hand, a violation of Criminal Law Article Section, uh, Section Article 6-301, malicious destruction of property may be far easier for the State to prove and has yet to be charged. The elements of that crime are far more basic and carry a much more severe penalty of incarceration." And then he equates that statute.

Q. And then he quotes a statute on the next, uh, few

pages, is that correct?

A. Yes.

Q. Okay. What - - And what did you understand, uh, Judge Michael to be telling you at that point?

MR. KARPINSKI: Objection.

THE COURT: Sustained.

Q. Was Mr. Holder ever charged with, um, malicious destruction of property to your knowledge?

A. No, not in connection with this.

Q. What about in connection with anything else?

A. Not to my knowledge.

Q. And on the last page of this email, uh, Judge Michael writes, "On the other hand, the more resources that the defendant demands from the state and from other parties which he seems to be dragging into this case, the more likely a jail - - the more likely that jail will be the result." Do you see that?

MR. KARPINSKI: "Will be a just result."

A. "Will be a just result."

Q. I'm sorry.

A. Yes.

Q. Thank you. "The more likely that jail will be a just result." Did you have communications with, uh, Judge Michael regarding that statement?

A. Quite a few.

Q. And what were those?

A. Um, well there was a series of them and he really never responded, but I - - I zeroed in on that language specifically, uh, because he, you know, was trying to ratchet up a payable criminal citations into jail time and it seemed like he was - - well he - - It didn't seem like, he said the more Mr. Holder drags third parties into this case, the more likely it is that you know he's going to try and put him in jail. And so I, in protecting my client's interest, I felt it was important for me to figure out from Joe, um, what he meant by third parties, what third parties, what do you mean by "dragging," what do you mean by "into this case," because I'm trying to keep my client you know from going to jail. So I sent him a series of follow-up correspondences, asking him about it.

MR. WEDDLE: Your Honor, I move Plaintiff's 11 into evidence.

MR. KARPINSKI: Same objection, your Honor.

THE COURT: Over objection, 11 is admitted.

(Petitioner's Exhibit 11 was admitted in evidence.)

(Petitioner's Exhibit 12 was marked for identification.)

Q. Mr. Greivell, handing you what's been marked as

Plaintiff's 12.

A. Okay.

Q. Can you identify this document for me?

A. Uh, September 17th email responding to, uh, his September 11th email, and I, you know, relatedly here was asking was does he mean - - "I was hoping you could do me a favor and explain what you mean by 'other third parties which he seems to be dragging into this case.' Are you talking about other pending or civil litigation with third parties? Or are you talking specifically about the discovery we have requested that may be in the hands of third parties? Or is it something else?"

Q. And that was the, uh, that was the - - Strike that. Your Honor, I move Plaintiff's exhibit 12 into evidence.

MR. KARPINSKI: Same objection.

THE COURT: Objection noted. 12 is admitted.

(Petitioner's Exhibit 12 was admitted in evidence.)

(Petitioner's Exhibit 13 was marked for identification.)

Q. Mr. Greivell, I'm handing you, um, what's been marked as, uh, Plaintiff's 13. Can you identify that document please?

A. Uh, September 25th, 2020 email. I was following

up on my September 17th email because I - - doesn't look like I received a response. And I said, "I'm following up on my question from last week about what you meant by about involving third parties. Clarity from you on this will help me advise my client on how to best ameliorate the concerns of the State regarding said third parties you expressed." And then sent him a Dropbox link where he could download, um, a - - a giant folder of discovery that we were producing in response to his letter. Um, and identification of experts we intended to call for the trial. Um, that's about it.

Q. Pointing your attention to the - - the Dropbox that you sent, uh, second paragraph, uh, in response to discovery demand of September 20th.

A. Uh, September 2.

Q. September - -

A. That must have been when we were in court.

Q. Okay. The discovery demand when, uh, Mr. - - Mr. Michael or Judge Michael handed, uh, Mr. Holder a discovery letter?

A. Yes.

Q. And that happened on September 2nd, 2020?

A. I don't remember the date, but if I wrote it, I tried to be pretty accurate.

Q. Okay. And you're sending a Dropbox, uh, full of

discovery materials to, uh, Jud - - Judge Michael. Do you know if he opened that Dropbox and actually downloaded or, uh, consumed the documents, so to speak?

A. Um, I think he clicked the link because his next email to me was kind of - - he said something to the effect of, you know, nice stuff, but I'm not gonna read it.

Q. Okay. Um, and the, uh, video, um that you referenced there of May 20, 2020, uh, there's a YouTube video there. What - - What appeared in that video?

A. Um, my recollection is that that was a video that Mr. Holder took, um, before any clearing happened. Um, and you know I guess the intent being to be able to show you know the difference between, basically what he did, uh, what it would have looked like before the clearing and everyone could see what it looked like after the clearing.

MR. WEDDLE: Okay. Your Honor, I move, uh, Plaintiff's 13 into evidence.

MR. KARPINSKI: Same objection.

THE COURT: 13 is admitted.

(Petitioner's Exhibit 13 was admitted in evidence.)

(Petitioner's Exhibit 14 was marked for identification.)

THE COURT: Thanks.

Q. Mr. Greivell, handing - - I handed you what's been marked as Plaintiff's 14. Uh, could you identify this document please?

A. Yeah, this looks like the email I was referencing. It's dated September 28th, Joe Michael writing back to me, um, after receiving my discovery link, saying, "Thanks for all the documents. I'm sure they're fascinating but I won't be reading them," et cetera.

Q. And, um, if I could point you to the third and fourth paragraph, uh, it says, uh, let's see, is Judge Michael talking about the prospects of filing a quiet title action in this case?

A. Yeah, what he's talking about in the third paragraph references, uh, number two. In the first paragraph - -

MR. KARPINSKI: Objection, your Honor. The document speaks for itself.

THE COURT: Sustained.

Q. When Judge Michael said the DNR's opinion, your opinion - - I'm talking about the last paragraph of the document. "The DNR's opinion, your opinion, the opinions of experts won't matter a hill of beans compared to the only opinion that matters, the equity judge's opinion."

What did you understand that to mean?

MR. KARPINSKI: Objection.

THE COURT: Sustained.

Q. The email talks about, if I can point you, um, third paragraph, it states that, "If a quiet title action is filed, it would be the State's intention to file a stay of the tickets, an MDOP charge, the statute of (the statute of limitations would likely run on that charge before it was even filed) until the court of equity sorts out his claim." Um, was there any stay of the - - any motion for stay or any stay motion filed with respect to the, uh, four DNR citations?

A. No. We were - - We were itching to get to trial and, um, you know, our - - our - - our position was clear – the State should try its case or drop it. Um, at Joe - - Joe's suggestion here that we, um, we give them a survey and we file a quiet title for the railroad in exchange for him not prosecuting for malicious destruction of property, was, um, just wasn't going to fly.

Q. Okay.

(Petitioner's Exhibit 15 was marked for identification.)

Q. Handing you what's been marked as Plaintiff's exhibit 15. Would you identify this for the, uh, for the

record please?

A. Uh, yeah, September 28 email, which I had referenced earlier, where Joe Michael sent, um, an estimate from DNR's, um, forester, um, giving estimate as to the dollar value of the damage that they perceived was caused by Mr. Holder.

Q. And what - - What was the dollar amount of the damage they perceived?

A. $462.50, but he also referenced that the, um, end of the first paragraph I think he says there's evidence of several large trees being removed down to their roots, but these occurrences were on the private property adjacent to the rail trail, rather than on the public land itself. Yeah.

Q. And - - And what relevance does that have?

MR. KARPINSKI: Objection.

A. Uh, it's - -

THE COURT: Sustained.

Q. The - - Did that, uh, did that relate to any of the four charges, uh, that - - that are at issue here?

A. Um, I assume so. Joe didn't usually send me DNR letters, um, and the only real professional interaction we had at that time was related to these citations and it was in the same - - No it wasn't in the same email chain, but yeah, I mean, it - - it appeared to me it was obvious

that he was relating it to the citations. And is producing as discovery.

Q. And when he states - - When this letter states that the, um, "there was evidence of several large trees being removed down to the roots, but these occurrences were on the private property adjacent to the Weverton-Roxbury Rail Trail, rather than on the public land itself," um, what - - what if any of the four DNR charges did that relate to?

MR. KARPINSKI: Objection. Relevance.

THE COURT: Sustained.

(Petitioner's Exhibit 16 was marked for identification.)

Q. Mr. Greivell, I've marked, uh, as Plaintiff's, I think, 17.

A. Yeah.

Q. And email chain. Can you, uh, explain, uh - -

MR. KARPINSKI: 17 or 16?

Q. 16, I believe.

THE COURT: 16.

MR. KARPINSKI: 16.

Q. Thank you. Can you identify that for the record please?

A. Yeah. I can. It's a - - It's an email I sent to Joe, um, September 30th, but I - - I think it skips an

email, um, because I'm saying, "I regret I don't know who Jessica Thomas is." And I think the reason I wrote that is because Joe had asked me if I could, um, send the documents to Jessica, um, so that she could download them and I - - I don't - - I don't send, you know, 30 gigabytes of discovery to people just because someone asked me to. So I wanted to know who she was. Uh, so, I think he - - Well maybe he wrote it in this email. Um, no he didn't. Um, so anyway, that's the reason for the first sentence. I don't know who she is, uh, tell me - - tell me who and maybe I'll send them to her. I did - - I said, "I removed the files because you stated you wouldn't be reading them." So the Dropbox, um, if you, you know, send someone a link, if they click It, they can download it. But I had the ability - - As the sender, had the ability, I had the ability to deactivate the link, um, and it's really pretty much as soon as Joe said, "Thanks I'm not going to read it," I took it away because if the State's not interested in it, they don't need to see it. So he made another request that Jessica Thomas could get the files, so that's what that - - The first two paragraphs is about that.

Um, I wrote to him, "Responding to your comment about bootstrapping," because he had written that, um, any person with a valid claim and you know significant

research behind it would - - would file an action of quiet title. The fact that an action is not filed is proof that he's a fraud." So he - - Joe had called my client a fraud because my client wouldn't file - -

MR. KARPINSKI: Objection. Move to strike.

A. - - a quiet title.

THE COURT: Sustained. Stricken.

A. Well that's what I wrote in response. So I said, "Applying your harsh reasoning, any person with a valid claim in 29 years of research behind it, would file an action of quiet title. The fact that such an action has not filed is proof that the State is a fraud." Um - -

Q. And the State never filed an action of quiet title, correct?

A. I've never seen one, never heard of one.

Q. Um, skipping down to the last paragraph on, uh, page one of this document going over onto page two. Can you describe that paragraph please?

A. Yeah, well it says, "Finally, my client remains disturbed about your comment concerning 'dragging third parties into this case' as you have specifically stated your opinion that the more he involves them, the more likely it is he will go to jail. I previously noted to you my difficulty interpreting this statement as there are many third parties involved. With the various issues

confronting my client and these properties, can you please provide the clarity I have requested so I can advise my client as to how best to avoid going to jail?"

MR. WEDDLE: Thank you. Um, your Honor, I move Plaintiff's 16 in.

MR. KARPINSKI: Same objection.

THE COURT: Admitted.

(Petitioner's Exhibit 16 was admitted in evidence.)

(Petitioner's Exhibit 17 was marked for identification.)

Q. Mr. Greivell, showing you what's marked as Plaintiff's 17. Would you identify this document please?

A. It looks like Joe's, uh, email responding to the last email, exhibit 16. Same day, September 30 about a half-hour after my email.

Q. And he states that he - - on September 30th that he's not going to be reading the, uh, Dropbox because he may not even be trying the case.

A. You're talking about this email?

Q. Uh, yes. If I'm looking at the right document. September - -

A. Oh yeah, he says - - He did say, "I won't be reading it because I may not even be trying the case."

Q. Okay.

A. Um, yeah. It says what it says. He - - He's pushing me to accept the State's offer or reject the State's offer. Again, saying - - insisting that we file a quiet title, um, or else.

MR. KARPINSKI: Objection. Move to strike.

THE COURT: Sustained. Stricken.

MR. WEDDLE: Your Honor, move Plaintiff's 17 into evidence.

MR. KARPINSKI: Same objection.

THE COURT: Same ruling. Admitted.

(Petitioner's Exhibit 17 was admitted in evidence.)

MR. WEDDLE: Thank you.

THE COURT: With the understanding that in reviewing the exhibits, the Court may well be persuaded that the objections are well taken.

(Petitioner's Exhibit 18 was marked for identification.)

THE COURT: How many more do you have?

MR. WEDDLE: Coming down to the end of the, uh, the correspondence.

THE COURT: That's a - - getting down to the end?

MR. KARPINSKI: Three? Two?

MR. WEDDLE: Two or three more, it looks like.

THE COURT: Okay. Just curious, thanks.

Q. Mr. Greivell, I've handed you what's been marked as Plaintiff's 18. Could you identify this please?

A. Yeah, this is, uh, September or October 1 email I sent responding to the Forest Damage Assessment email, um, which had been sent on September 28th. I wrote back to Joe, um, saying, "It appears the claimed damage occurred outside of the lands claimed to be owned by the State. Is it safe for me to assume you'll be voluntarily dismissing all of the DNR citations promptly? If not, please produce all documents, pictures, videos, correspondence related to the 'field examination and GIS analysis' conducted by or referred to by Mr. Swartz as well as all documents related to the 'two tree planting contractors'" et cetera. "Also, as you consider trying to put Mr. Holder in jail for malicious destruction of property, I encourage you to review your decision to do so in light of *Gibson versus State*, citing Rosenberry (sic) versus State, quote, "Rosenberg" - - I'm sorry, *Rosenberg v. State*, quote, "Rosenberg claimed on appeal that the removal of a post, the post was not malicious. Judge Urner defined the term 'willfully' as characterizing an act done with deliberate intention for which there is no reasonable excuse. And the word 'maliciously' as a wrongful act committed deliberately and without legal justification. Under these

definitions, the Court held that *Rosenberg* was asserting a property right which the owners of the adjacent ground were contesting and thus this did not constitute a criminal offense. Finally, while Mr. Holder appreciates your advice regarding how to conduct himself in the future so as to best avoid going to jail, I don't believe you answered my several queries regarding what you meant by other third parties which he seems to be dragging into this case."

MR. WEDDLE: Thank you. Your Honor, I move, uh, Plaintiff's 18 into evidence.

MR. KARPINSKI: Same objection.

THE COURT: 18 is admitted.

(Petitioner's Exhibit 18 was admitted in evidence.)

(Petitioner's Exhibit 19 was marked for identification.)

THE COURT: 19?

Q. Mr. Greivell, I've handed you what's been marked as Plaintiff's exhibit 19.

A. Yes.

Q. Would you describe this email please?

A. October 9 email, in the same chain. Um, don't know response to an email from Joe, responding to the last one or not, but I said, "Hi Joe, I'll keep this

short. Mr. Swartz's letter states that the damage to white oak and several large trees being removed did not occur on the public land itself. I believe this renders the two charges under 08.07.06.13 unsupported by probable cause. Will you continue to pursue those anyway? Finally, I'm sorry to keep asking, but you haven't answered me about what you meant by other third parties which he seems to be dragging into this case in your email of September 11. Can you please explain what you mean by that?"

MR. WEDDLE: Your Honor, I move Plaintiff's exhibit 19 into evidence.

MR. KARPINSKI: Same objection.

THE COURT: Be admitted.

(Petitioner's Exhibit 19 was admitted in evidence.)

(Petitioner's Exhibit 20 was marked for identification.)

Q. Mr. Greivell, I'm handing you what's been marked as Plaintiff's ex - - exhibit 20. Can you identify this please?

A. Yeah, it's, uh, his - - Joe Michael's response to the last email of October 9th. I had asked two yes or no questions in my email and Joe wrote back, "Yes." Yeah.

MR. WEDDLE: Your Honor, I move to admit Plaintiff's

exhibit 20.

MR. KARPINSKI: Same objection.

THE COURT: 20 is admitted.

(Petitioner's Exhibit 20 was admitted in evidence.)

(Petitioner's Exhibit 21 was marked for identification.)

Q. Mr. Greivell, I'm handing you what's been marked as Plaintiff's exhibit 21. Can you identify for the record what this is?

A. This is an email I sent to Joe, uh, following up on his "yes" email about a week later, October 19th, attaching a letter, um, and the letter is a six-page letter attached of the same date, October 19th, um, and it is me making one last effort to, um, tell Joe I - - I want an answer to these questions about what he means by third parties being dragged into this case.

Q. And you sort of recount the history of the communications, um, that we walked through over the last couple of exhibits.

A. Yes.

Q. It looks like you do that from roughly pages two of six and three of six. Uh, three of six, then you, uh, discuss the ambiguity of the yes or no question.

A. Yes.

Q. Uh, and, uh, you then describe sort of the - - the history of the - - the civil and criminal disputes, correct?

A. Yes.

Q. And can you - - Can you explain to the - - the Court why that's - - that's important for Judge Michael to understand?

MR. KARPINSKI: Objection.

THE COURT: Sustained.

Q. Mr. Greivell, why did - - why did you take the pains to write a six-page letter to Judge Michael explaining the - - the history of the various disputes, uh, with his - - his neighbors?

MR. KARPINSKI: Objection.

THE COURT: Sustained.

Q. Turning to page six, uh, of the letter, you write one final - - About the middle of page six. You say, "As such, I write one final time to directly ask that you clarify your statement of September 11th, 2020 to confirm which if any of these parties Mr. Holder needs to stop, quote, 'dragging into this case.' And please define the scope of what you mean by dragging." Uh, did Mr. - - Did Judge, uh, Michael respond to that one last attempt?

A. Um, he never answered me about those questions. I believe his response to this email was something like,

you know, "Nice letter, but I'm not going to read it." I didn't - - "I don't have time to read your emails." You have - - I didn't see a yes or no answer to my question on page one. He was referring to this question about are we going to file a quiet title and ask for a stay or are we rejecting his offer, inviting him to pursue charges for malicious destruction of property. So he said, he responded to this by saying, um, you know, something to the effect of "I'm not going to read it, um, just tell me yes or no." Accept it or reject it. Or propose an alternative solution.

Q. And, um, turning to paragraph, I'm sorry, turn to page one. Turning back to page one of the letter, second paragraph. You note that you, uh, wrote a - - that you made a - - a discovery request. Did he respond to that discovery request?

A. The September 11th?

Q. Yes.

A. Oh yes. Um, that the State's Attorney's Office sends out discovery, um, through one of its staff people, usually - - This one was probably Brandi Molina, if I remember, but, um, what they do is they - - they usually take a copy of my letter and scan in all the other documents that are related, um, as one file with the - - with my letter being the first few pages and then the

whole file constitutes their discovery response. There's usually no correspondence that goes along with it, just says, "Discovery sent." I think that was September 15th.

(Petitioner's Exhibit 22 was marked for identification.)

Q. Mr. Greivell, I'm handing you what has been marked as Plaintiff's 22. Can you identify this document for the record please?

A. Yep, that's, uh, that's a response from Joe Michael, 3:05 same day, October 19th, as I sent that six-page letter, he says, "Thanks, I'll put it in the file, but it won't be read."

MR. WEDDLE: Your Honor, I move, uh, Plaintiff's 21. I believe - - I don't think I moved that in, and Plaintiff's 22 into evidence.

MR. KARPINSKI: Same objection, Judge.

THE COURT: 21 and 22 are admitted.

(Petitioner's Exhibits 21 and 22 were admitted in evidence.)

(Petitioner's Exhibit 23 was marked for identification.)

Q. Marked as Plaintiff's exhibit 23. Mr. Greivell, can you identify that document for the record please?

A. Uh, it's a follow-up email from Joe Michael to his previous email. Um, I don't believe there was any

intervening response from me. He said - - This is about two hours later. He said, "Please pardon my earlier short reply. Don't spoil the ending for me, but was there a yes or no counter proposal - - yes or no or counter proposal in your letter? I saw the letter had more than one page and that critical information did not appear on the first page so I could not devote more time to it. But if there is such a response, do me a favor and cut and paste that part. It's a more concise response. If there is not such a response, no need to reply. Just wait until there is at least a trial date to open this file again. I don't foresee this matter reaching a trial until you (assuming that's 'your') inevitable elevation to a bench, so again, giving the overwhelming claim of other far more important crimes on the State's manpower, the State won't be putting any time into the case anytime soon. So save the electronic ink and effort as I have frequently recommended."

Q. You - - You see the, um, "inevitable elevation to the bench," comment? What - - What does that mean?

A. Um, Joe and I both applied for a vacancy in 2019. Um, and we both made the short lists and, uh, Judge Wilkinson was appointed by Governor Hogan. Then, uh, this was late 2020. There was anticipation of, um, Judge Dwyer retiring. There was, um, I think Judge Terry Myers

was retiring soon on the district court, so we all kind of knew that we were all going to be putting in for the next couple spots coming up and, um, you know, Joe - - Joe didn't really have - - outwardly he didn't express high expectations that he would ever be chosen, but, um, he - - He just kind of had that way of, you know, "Oh you're going to be judge some day so this case will be long gone before you're judge - - or you'll be judge long before this case comes and goes."

Q. Focusing in on the, uh, May 20, uh, May 2020 timeframe, Mr. Holder was, you know, this - - these DN - - DNR citations genera - - were, uh, generated or the genesis of - - of his walking about properties, correct? In the May 2020 timeframe?

A. I don't understand the question.

MR. KARPINSKI: Yeah, objection. I - -

Q. Sure, I'm sorry. It's getting late in the day.

THE COURT: Moot point.

Q. I've been asking questions for a long time. Um, the DNR citations, uh, those came to being in approximately May of 2020, correct?

A. June 9th I believe.

Q. Right. But they stemmed from activities of - - of Mr. Holder allegedly in May, correct?

A. Well that's what I would have thought, but he - -

the citations themselves actually allege his behavior occurred on June 8th, um, and as I recall there was no activity on June 8th. That was one of our chief defenses was when - - when the State chose to bring the case to trial, go ahead and try and prove something happened on June 8th.

Q. The, uh, the May 20th, uh, video that you sent, uh, Judge Michael showing, uh, Mr. Holder I think walking about various properties, why was he walking about those properties?

MR. KARPINSKI: Objection.

THE COURT: Sustained.

MR. WEDDLE: If I may have a second, your Honor?

THE COURT: Okay. (Pause for approximately 30 seconds.)

MR. WEDDLE: Thank you, Mr. Greivell.

END DIRECT EXAMINATION

MR. KARPINSKI: I just have a couple questions.

THE COURT: Okay, cross.

CROSS-EXAMINATION

BY MR. KARPINSKI:

Q. Mr. Greivell, you mentioned this issue in terms of Judge Michael being elevated to the bench. You in fact actually ran against Judge Michael in 2022, correct?

A. Uh, what I mentioned was him saying that I would

be elevated to the bench.

Q. Okay, but you did, in fact, run against him in 2022, correct?

A. That is correct.

Q. You file your candidacy on actually on the date that Governor Hogan announced that Judge Michael would be selected to serve on the circuit court for Washington County, correct?

A. Yes.

Q. Okay. Um, you said that you - - you were representing Mr. Holder in connection with these DNR, uh, citations at the beginning. When did your representation end?

A. Never.

Q. Never?

A. My appearance terminated in the case but I have been pervasively Mr. Holder's counsel with regard to an awful lot of things.

Q. Well when did your - - when did your appearance, uh, as the attorney of record cease and Mr. Harbin become the attorney of record?

A. I don't remember specifically. Um, what I can tell you, to fill it out, is that trial was not held until - - trial was not held until July 2021, and if I recall, Mr. Harbin entered an appearance and filed a

demand for speedy trial in December of 2020. If I - - I think it was an enter appearance, strike appearance, uh, but I don't - - I don't remember - - I think that's what it was. He took over at that point.

Q. So the citation - - The citations remained pending from the date of issuance, I think in June, until July of 2021, correct?

A. Correct.

Q. Okay. And at some point in that process, Mr. Harbin took over as counsel of record, correct?

A. Yes.

Q. Okay. And what's your understanding of the disposition of the charges, the citations that were issued to Mr. Holder.

A. They were nol prossed.

Q. They were all nol prossed.

A. Yes.

Q. Was there a penalty or anything, uh, any fine that was ever paid by Mr. Holder to - - in connection with the DNR citations?

A. No.

Q. And, um, have you represented Mr. Holder in connection with is disputes with Ben Estes?

A. Yes.

Q. Have you represented Mr. Holder in connection

with his disputes with Chris - - Christine Morral?

A. Yes.

Q. My understanding is that one of the cases involving Ms. Morral includes a count that she violated the wiretap statute. Is that correct?

A. Yes.

Q. Okay, and are you representing or did you represent Mr. Holder in connection with the suit involving a Jeffrey Young?

A. Uh, for - - Yeah, on the record, for a period, yeah. And on appeal.

Q. Okay. That actually was a matter that was tried before Judge Wilkinson, correct?

A. I - - I wasn't there, but I think he did - - he did try the case, initially the order that I appealed from.

Q. But did - - Were you the one who argued the case in - - on appeal in front of the Appellate Court of Maryland?

A. Yes.

Q. Okay. What other cases - - What other matters have you represented Mr. Holder in?

A. Define matter?

Q. Okay. Well let's - - Let's start, are there any other criminal matters other than the DNR citations?

A. Um, not wherein Mr. Holder was a defendant. Uh, yeah, I mean I guess I never entered an appearance with regards to Mr. Estes', um, charges that he initiated, uh, but I certainly advised Mr. Holder - -

Q. Okay.

A. - - regarding that.

Q. And do you remember when Mr. Estes filed - - Let me back up for a second, Mr. Greivell. That was involving, what, a peace order?

A. No. Um, there was a peace order, uh, but the criminal charges weren't really germane to the peace order.

Q. Okay, and what were the criminal charges?

A. Um, if I recall, there were assault, stalking and trespass. And if I recall, Ben Estes filed those criminal charges in November of 2020, and all of the behavior about which he complained had occurred in December, January, and February of 2019, 2020.

Q. Okay.

A. So about almost a year previous.

Q. How long, if you know, were those criminal charges pending against Mr. Holder that were initiated by Mr. Estes?

A. They were initially resolved by plea, uh, in July of 2021 and then Mr. Holder was put on probation and

prohibited from being on his property, um, so he immediately appealed that and a de novo appeal was brought up to the circuit court. I don't know how long that took but eventually the State, as I understand, the State dismissed that charge rather than proceed to trial.

Q. Okay. And do you know when that got resolved?

A. I don't. Um, it could have been three months later, could have been 12 months later. I don't recall.

Q. In your October 19 letter, you referenced that Mr. Holder was having problems with, let me make sure I got this correct, Christine and Scott Morral, Jeffrey Holder, Benjamin Estes, potentially half of the Sun - - Stonecrest development, the Town of Keedysville, Boonsboro, Sharpsburg, Washington County, Washington County Health Department, the Maryland Department of Health, the Department of Natural Resources, and the Maryland Department of the Environment, and the State of Maryland, and Fred Frederick, who I'll represent is a surveyor of Frederick, Seibert & Associates. Was he having issues with all of those entities?

A. Yeah, you said problems, I said ongoing disputes, but yes.

Q. Okay. But he was having ongoing disputes with all of those.

A. Yes.

Q. Individuals and/or entities as of the time that you wrote this letter on October 19 of 2020?

A. Absolutely.

Q. Whew.

A. There's a lot of people he had to avoid dragging to - - to avoid being sent to jail.

Q. Well let's go through, um - - Let me ask you a question. What, if any, conversations have you ever had with Andrew Bright as it relates to, uh, Mr., uh, Justin Holder?

A. Maybe about half a dozen.

Q. Okay. And what were those discussions?

A. Uh, probably even split. I think they all regarded Public Information Act requests and some of them were about water and sewer agreements, um, and documents, and some of them were about public roads.

Q. Okay.

A. Such as the ones that we talked about, Antietam Drive, Mount Briar extended.

Q. And were any of them related to any criminal investigations or criminal charges involving Mr. Holder?

A. Well related is an interesting word. Um, yes and no. Um, so you know I think the criminal, the DNR charges were directly related to Mr. Holder's efforts to gain information about the water and the sewer and the

public roads. Um, he had discovered that the, um, the county has been misrepresenting, uh, his properties as being actively hooked up to water and sewer.

MR. KARPINSKI: Objection. Move to strike.

THE COURT: Sustained. Stricken. Next question.

Q. Okay. What, if any, conversations have you had with Mr. Downey about Mr. Holder?

A. Probably fewer because Andy was, um, working in the County Attorney's Office at that time and sort of doing - - I think he kind of took the lead on interfacing with the public information matters that Mr. Holder had been seeking.

Q. You were shown exhibits, um, 10 through 23. And were Mr., uh, Mr. Downey and/or Mr. Bright copied on any - - any of this correspondence?

A. Um, not by me. You know, whether - - I'm sure a lot of those emails have flown in a lot of different directions since then, but the, you know, the original transmission, I don't believe they were copied on any of them.

Q. So - - So Mr. - - Just so I'm clear, Mr. Downey and Mr. Bright were not included in any of the correspondence that we have spent well over an hour and plus going over. Those correspondence - -

A. Well - -

Q. - - between you and Mr. Michael, correct?
A. Uh, I can't see who Joe "bcc'd", you know, so these emails all come out of my email system, so Joe might have blind copied other people that, you know - -
Q. I don't need to know what Judge Michael did or didn't do. I'm asking - - I'm asking you - did you copy Mr. Holder (sic) and Mr. Bright on any of these communications. Mr. Downey and Mr. Bright,.
A. Yeah, previously you had asked me if anybody, if they and received it from anybody, um, so no I did not copy any of them originally. I - - I can't say whether I have since then, I just don't remember.
Q. Are you currently representing Mr. Holder?
A. Yes.
Q. And what are you - - What matters are you representing Mr. Holder?
A. Define matters? Uh, a lot of things.
Q. Any - - Any - - Any matter, any issue where you would require legal representation?
A. Yeah.
Q. Okay. What are they?
A. Give me a while. Um, there is, uh, there's quite a bit of - - quite a few pieces of litigation that Mr. Holder is involved in. Um, I think right now my appearance is only in one, which is the case against

Christine Morral, um, and a number of other parties. We call it the 116 case that ends in number 116. Um, there - - Mr. Holder and I advise frequently about pretty much all of the other litigation he's involved in, you know, regarding Ben Estes, Fred Frederick, um, the county, um, I think he's got PIA litigation against state agencies, uh, and in maybe Annapolis, um, yeah. I don't know. I can't just say if that's exhaustively everything. I don't - - I don't have them all segregated as different matters because they all - - they all kind of relate.

Q. Okay, but you've been providing Mr. Holder with consultation on those matters as well, correct?

A. Yes.

Q. That's all I have. Thank you, Mr. Greivell.

A. Sure.

END CROSS-EXAMINATION

THE COURT: Any redirect?

MR. WEDDLE: Yes.

REDIRECT EXAMINATION

BY MR. WEDDLE:

Q. Um, Mr. Greivell, you talked about the, um, the Ben Estes charges?

A. Yes.

Q. Um, and you talked about the, I think, the trial of the DNR - - when the DNR cases came to trial on July

14, 2021, correct?

A. Yes.

Q. Okay. Um, with respect to the four DNA citations, um, the, uh, did you – - did you receive as counsel any *Brady* materials related to those DNR citations?

A. Um, well *Brady* material is anything that's in the State's possession that tends to exculpate the defendant. And so, you know, sometimes *Brady* is in the eye of the beholder, um, you know, so certainly the first or second pack of information that we received from the State, um, some of it was exculpatory and some of it wasn't. Um, so I don't know whether they considered it *Brady* or not, but I can tell you that, um, when the final plea deal came down in I think July 14, 2021, or thereabouts, um, Kenny Shapiro for the State's Attorney's Office had been prosecuting the case, um, interfacing with Dave Harbin, um, I know that we insisted on having a written confirmation from the state's attorney that they had turned over every - -

MR. KARPINSKI: Objection, move to strike.

THE COURT: Sustained. That part is stricken, the last statement.

A. Okay, as far as - -

THE COURT: There's not a question pending.

Q. Um, did you receive any - -

THE COURT: I'm sorry, maybe there is. You didn't fully respond to that ans - - to that question.

A. Right. I was trying to remember what the question was. I'm sorry.

THE COURT: I did obviously strike part of your answer. But that doesn't necessarily mean you have provided all of the answer you thought appropriate.

A. Right. I'm sorry. Were you asking the - - what *Brady* material did we receive?

Q. If any, yes.

A. Um, yeah, I mean, some of it was exculpatory. I - - I think we - - we knew that there was stuff that they probably had that we didn't get. In fact, frankly, um, there were tons of documents that the State, you know, had that we knew that they had, but they didn't turn over.

MR. KARPINSKI: Objection. Relevance.

A. So we didn't get all the *Brady* material.

THE COURT: I'll sustain and stricken on the speculation that they had or belief.

Q. If I may approach the witness, your Honor?

THE COURT: Yes.

Q. Uh, if I can direct your attention to, uh, Petitioner's exhibit seven. It's labeled "Holder PIA

responses 1 through 73," I believe?

A. Yeah.

Q. Did you receive or did Mr. Holder receive any of the emails in that package, uh, from the State related, uh, to *Brady* as a *Brady* disclosure?

A. Um, no I've seen this document when it came through and these appear to be all email correspondence between Christine Morral and Joe Michael in June of 2020 and we didn't receive any - - any of it. And up through the final date of the trial in district court, none of these had been produced by the State.

Q. And that date just, to bring it back to your Honor, that was July 14, 2021, the date of trial, correct?

A. I think so.

Q. Or - - I'm sorry, it was actually July 15th -

A. Okay.

Q. - - 2021, correct?

A. Probably. Um, I know that there was correspondence on the 14th, um, again where we were insisting they confirmed they turned everything over.

Q. Okay. And when Mr. Shapiro responded to your - - your request on July, uh, 14, 2021, to turn over, uh, discovery, correct?

A. Um, Mr. Harbin made the request. I had insisted

that Mr. Harbin, uh, get that confirmation in writing and - -

MR. KARPINSKI: Objection, move to strike.

THE COURT: Well are you going to leave it at that? That you requested, don't to response.

A. I won't - - I won't put out hearsay unless you want me to.

THE COURT: No, let's try not to.

A. Sure.

THE COURT: If it really is hearsay, but it sounds like it is.

A. Well no what I said to him is - -

THE COURT: Don't - - Don't - -

A. I'm sorry.

THE COURT: Don't give us the answer to what he said. That's the point.

Q. Um, do you know - - Do you have knowledge of whether Mr. Shapiro responded to the request made by, uh, Mr. Harbin for, uh, any *Brady* materials?

A. Yes.

Q. And, uh, were *Brady* materials included in that response?

A. He produced additional documentation, um, most of it I think was a - - a Word document that appeared to be compiled by Ben Estes, articulating Mr. Estes' perception

of his position, vis-à-vis his criminal charges. And then he - - Kenny, um, indicated that's everything.

Q. Okay. And, uh, Mr. Shapiro, uh, production did not include any of the documents in Plaintiff's exhibit seven, correct?

A. It did not.

Q. Um, you indicated, uh, that you had conversations with Mr. Bright regarding water and sewer agreements.

A. Yes.

Q. Uh, what was the purpose of those conversations?

A. Pretty early on, um, certainly before the charges were filed, I think, um, Mr. Holder had made a series of PIA requests. I wasn't really involved in them. He - - He was just making requests to the town, town officials and county, county officials. Um, and I don't know, you know, why he asked me to get involved in this particular one. I prob - - I probably offered it to him, like hey, let me - - I know these guys pretty well, let me call them. I know Andy and Kirk and I think they're - - they're, uh, you know pretty good guys and they had a history of cooperating with - - with me, even though I sue them sometimes, you know, that's how it is. And, um, so I, you know, I - - I don't know if I called or emailed. I don't know. I might have called Kirk first actually. Um, I don't remember. And I said, "Hey, you

know, my guy is looking for this stuff. He's having trouble, you know, sort of circling the drain to figure out how can we get it. Can you help me organize and get a response?"

Q. And why were those agreements important?

A. Um - -

MR. KARPINSKI: Objection.

THE COURT: Sustained.

MR. WEDDLE: Thank you, Mr. Greivell. I have nothing further for him.

END REDIRECT EXAMINATION

MR. KARPINSKI: Nothing further.

THE COURT: Mr. Greivell, thanks very much.

MR. GREIVELL: Thank you.

THE COURT: Thank you for the history lesson.

MR. GREIVELL: Your Honor, I wasn't here. Is there a sequestration order? Am I not supposed to talk to anybody?

THE COURT: There is a rule on witnesses.

MR. GREIVELL: Okay.

THE COURT: Yes.

MR. GREIVELL: I will honor it.

THE COURT: Thanks for asking.

END TESTIMONY OF ADAM GREIVELL

MR. HOLDER: Thank you, Mr. Greivell.

THE COURT: It's, uh, just about 4:00 o'clock. Let's talk about scheduling, whether we've got something quick to do now, whether there's any issue about Monday. Um, if we just move to Monday, what you all think at this point on whether Monday is feasible for both evidence and ideally a ruling? Um, so - -

MR. WEDDLE: To - - To maybe address your - - your Honor's point, um, I think the remaining - - I think I don't have any quick witnesses, certainly. Um, at this point, my schedule is clear on Monday. Um, we'll see, I guess where the - - the testimony takes us. Um, perhaps we'll be ready to make closing arguments on Monday.

THE COURT: Okay.

MR. KARPINSKI: Well I'm not at all optimistic given the pace of play today that we're going to finish at all on Monday, uh, and unfortunately I have to appear in front of the Board of County Commissioners in Charles County on Tuesday morning, so I - - I hate to - - Your Honor and I are coming from the same area, hopefully you came up last night, rather than having to fight that traffic this morning.

THE COURT: Oh yeah, it was awful this morning, but fortunately did get up last night.

MR. KARPINSKI: So I mean, I guess - - I guess the question is whether we're looking at Monday and then

possibly over - - doing - - holding over to Wednesday. And I hate to make your Honor keep going back and forth. I have - - This is a very contentious litigation matter that I need to brief the Board of County Commissioners on down in Charles County.

THE COURT: Okay.

MR. WEDDLE: My schedule personally is open on Wednesday if needed. Um, I don't - -

MR. HOLDER: I'm good Wednesday. Thursday, I've got to be in Annapolis.

MR. WEDDLE: I'm sorry, say that again.

MR. HOLDER: I can do it Wednesday. Thursday, I've got Annapolis.

MR. WEDDLE: And you're available Monday?

MR. HOLDER: I'm available Monday, yes.

MR. WEDDLE: Okay, Mr. Holder is not available Thursday, but Wednesday he is.

THE COURT: Okay.

MR. WEDDLE: And - - And Monday as well.

THE COURT: All right.

MR. KARPINSKI: May I inquire how many more witnesses we have?

THE COURT: That would be good to know.

MR. WEDDLE: Um, Mr. - -

THE COURT: Or even ideally, if you had a sense, at

least from your standpoint, the amount of trial time. I realize that's without cross, but - -

MR. WEDDLE: Right, that I - - I can't answer. Um, I have Mr. Holder, and I suspect, um, you know, we've been calling witnesses out of order. I suspect, um, the defendants will want to put on Mr. Bright and perhaps Mr. Downey, but I don't know what opposing counsel's plan is.

MR. KARPINSKI: Okay.

THE COURT: Any thoughts, uh, there, Mr. Karpinski?

MR. KARPINSKI: Well we will be putting Mr. - - Mr. Bright and Mr. Downey on. Uh, their testimony will be much more concise. I'll need two hours trial time to complete our portion of the evidentiary part of it.

MR. WEDDLE: And - - and if I may, just to bring the Court back, uh, Judge Michael, obviously I need to finish up with him. Obviously, Mr. Karpinski will have a chance to redirect. Um, it's my understanding he's available Monday morning. Um, so perhaps we start with him. Just sort spit-balling there.

THE COURT: Okay. Has Monday even been cleared with the assignment office as far as we know?

MR. KARPINSKI: Yes, your Honor, Judge - - Judge Wilson cleared.

CLERK: Yes, Judge.

THE COURT: Okay. Can we check and see if Wednesday

would be available for us if we need to?

COURT REPORTER: There was a five-day jury trial go out so - -

THE COURT: That opened up. Okay. Yeah, why don't we check just in case they jumped on that time to fill it in?

MR. KARPINSKI: Your Honor, this - - this, uh, thing for the Board of County Commissioners, I - - I agreed to do that, um, because my five-day trial, up here, uh, fell out. Uh, do you want me try and inquire whether I can participate in my board meeting on Tuesday by Zoom and that would not require your Honor to go back and forth from Montgomery County?

THE COURT: That would be great if you could. You know, I don't want to put you in a bad spot with your client, but that would be - - Are you available, Mr. Weddle?

MR. WEDDLE: On?

THE COURT: Tuesday.

MR. WEDDLE: Tuesday?

MR. KARPINSKI: I'm sorry, unfortunately Mr. Downey has got to be in front of his Board of County Commissioners on Tuesday.

THE COURT: When on Tuesday?

MR. DOWNEY: Not necessarily the whole day, but

probably late morning.

THE COURT: How long do you think that would be and would it be possible for somebody to - - to fill in? You're here as a corporate representative or? Trying to work around the Court and, uh, at least five of us, so - - six.

MR. KARPINSKI: Your Honor, if the Court will give me the leeway to excuse myself at 10:45 on Tuesday to attend to the Board of County Commissioners via Zoom, I will do that. And Mr. Downey, if you need to, step across the street, appear before your Board of County Commissioners, that would probably, I assume, make it easier for everyone involved.

THE COURT: Yeah. Well why don't we give that a try and we'll - - may have to bob and weave more than ideal, but - -

MR. WEDDLE: May I ask a question? How long is your - - Do you know now long your meeting is on Tuesday?

MR. KARPINSKI: Um, hopefully it will be less than an hour.

MR. WEDDLE: Okay.

MR. KARPINSKI: I will try and keep it to less than an hour. But it's a - - it's a closed session, briefing I've got to do.

THE COURT: Okay then why don't we check with the

assignment office on Tuesday and Wednesday, just to really play it safe?

COURT REPORTER: We're waiting on a response from them.

THE COURT: Okay. (Pause for approximately three minutes.)

COURT REPORTER: Assignment said they could make that work.

THE COURT: Both days?

COURT REPORTER: Both days.

THE COURT: Okay.

MR. KARPINSKI: Your Honor, we will - - we will move things around to be available Tuesday.

THE COURT: Okay. And as far as, um, Judge Michael, we're going to look to Monday morning?

MR. WEDDLE: I think that was - - I think that was the - - what the indication was as to his availability. Of course we'll work with that, but that was my understanding.

MR. KARPINSKI: Your Honor, would you like me to tell Judge Michael's assistant that we would appreciate it if he would appear at 9:30 on Monday morning?

THE COURT: That would be good or - -

MR. KARPINSKI: Judge Michael's assistant has been my point of contact, so - -

THE COURT: Okay. Or if there's some other accommodation, we'll fit him in if he's tight and needs to accommodate something else. But it sounds like Monday morning would work.

MR. KARPINSKI: I'll - - I'll ask him what his schedule is and his preferred time and I'll convey that to Mr. Weddle.

MR. WEDDLE: Thank you.

THE COURT: Okay. All right.

COURT REPORTER: He's on the bench right now.

THE COURT: And counsel, I'm going to give you my email address so - - I've got more official ones but this has a better shot at getting to me. And if you could not share this with other people in the world. Put it on - - Never mind I won't say it. It's not fancy if one of you could grab these. Note that the first part of that is not my full name, the last two letters of my last name are not included.

MR. KARPINSKI: Yes.

THE COURT: Okay, so anything else we need to talk about?

MR. WEDDLE: Is there - - I'm sorry, is there a dot after the - -

THE COURT: No dots.

MR. WEDDLE: Okay.

THE COURT: Just the first and last name partial, partial last name and then @Gmail. So if something comes up where that we need to talk to each other about, let me know.

MR. WEDDLE: Thank you, your Honor.

MR. KARPINSKI: Thank you, your Honor.

MR. HOLDER: Thank you, your Honor.

THE COURT: Thanks, folks.

MR. KARPINSKI: Your Honor, do you want to start at 9:30 on Monday?

THE COURT: Yes, 9:30 works.

PROCEEDINGS END AT 4:06 P.M.

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of Justin Holder v. Board of County Commissioners, Washington County, et al., Case No. C-21-CV-21-97, in the Circuit Court for Washington County, on October 18, 2023, before the Honorable Richard Jordan, Senior Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 240 constitute the official transcript of the proceedings.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 24th day of January, 2024.

Tracy L. Zamora

_____

Tracy L. Zamora, Court Reporter